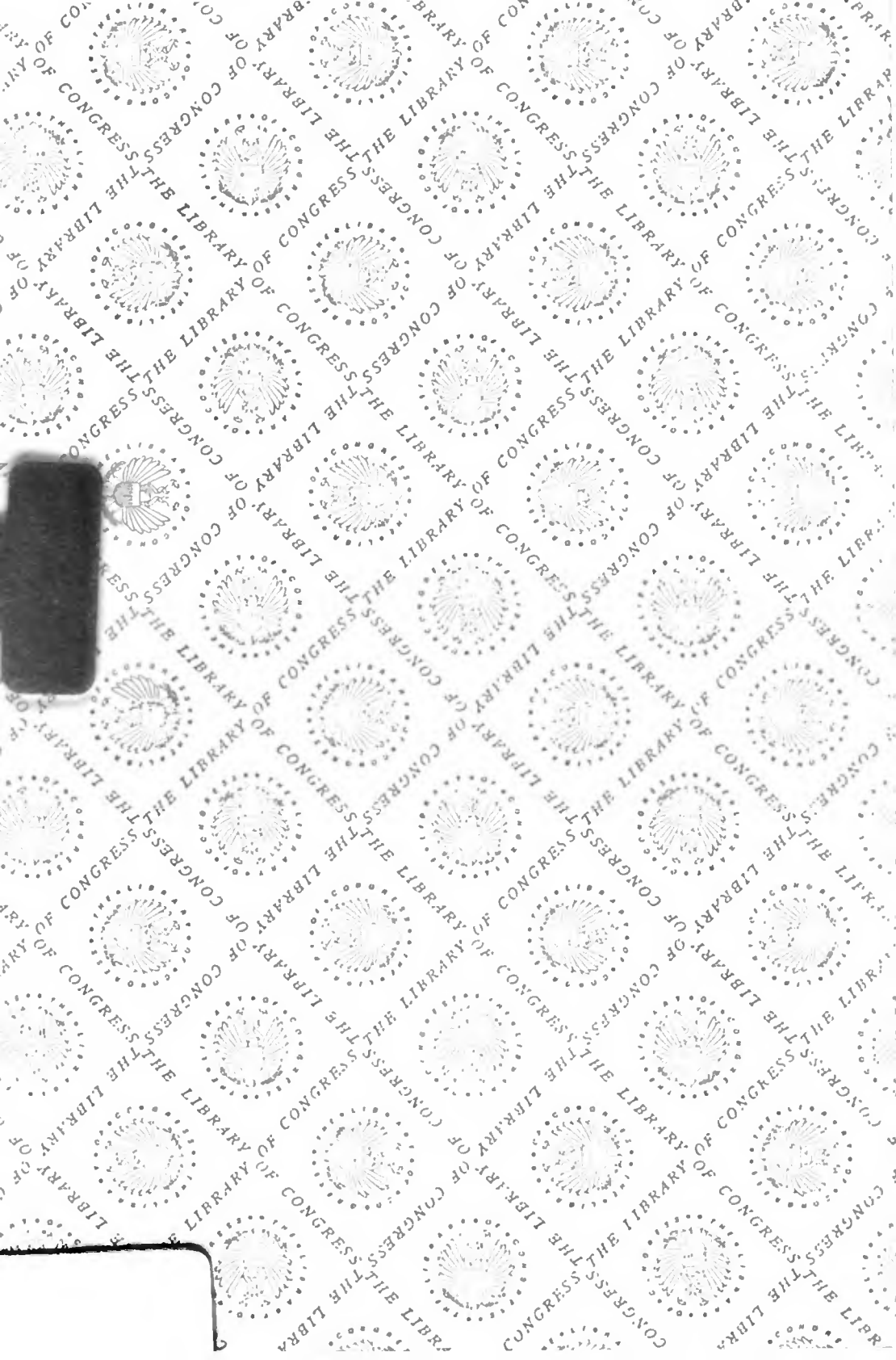

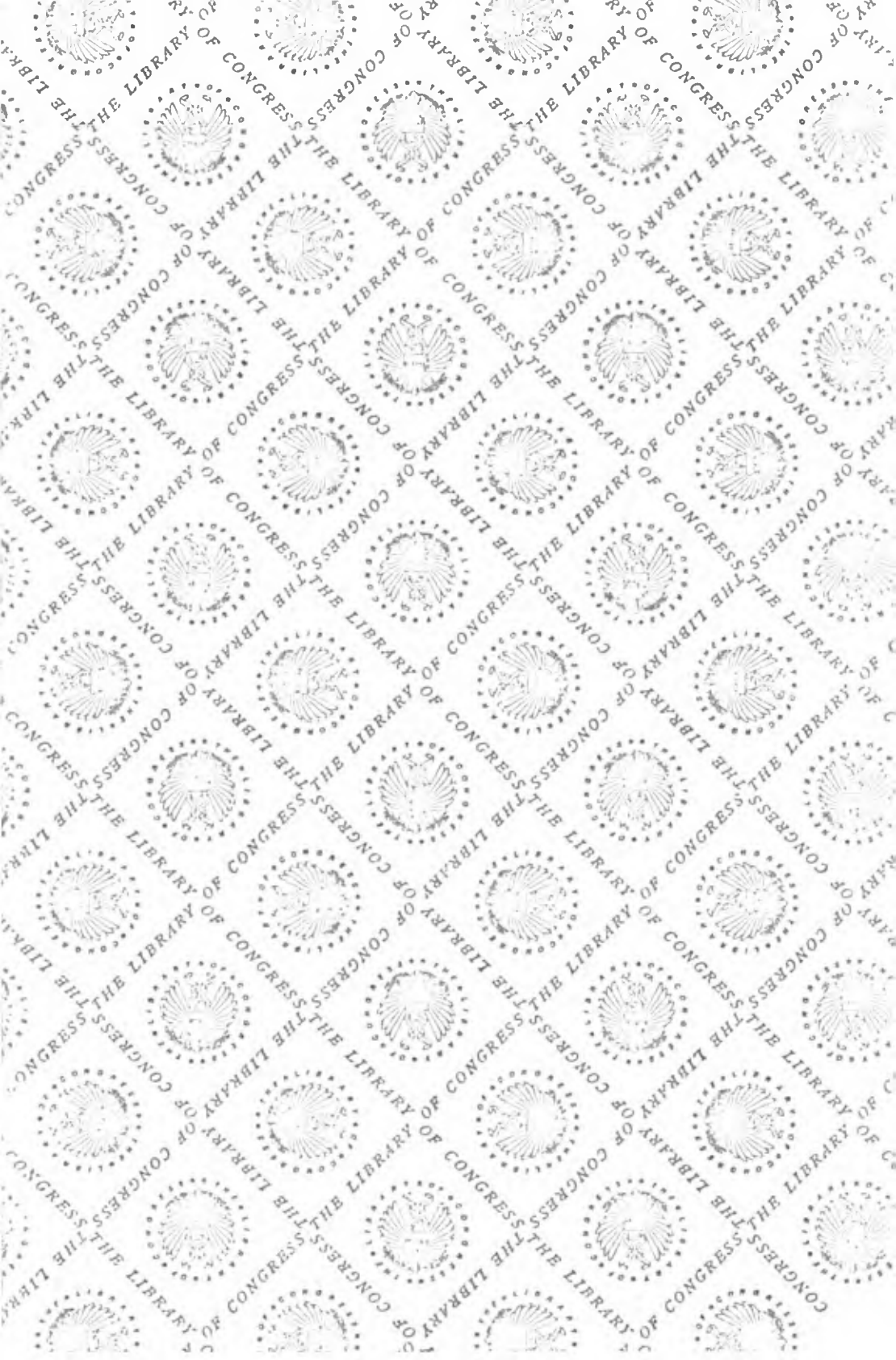
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# CLAIMS AGAINST PERSONS ENTITLED TO DIPLOMATIC IMMUNITY



## HEARING

BEFORE THE

## SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

## COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

## H.R. 7679

CLAIMS AGAINST PERSONS ENTITLED TO DIPLOMATIC IMMUNITY

AUGUST 1, 1977

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# CLAIMS AGAINST PERSONS ENTITLED TO DIPLOMATIC IMMUNITY

MONDAY, AUGUST 1, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2237, Rayburn House Office Building, Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Represenatives Danielson, Mazzoli, Harris, Moorhead, and Kindness.

Also present: William P. Shattuck, counsel; Alan F. Coffey, Jr., associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The subcommittee will come to order.

We do have with us today witnesses who will testify with respect to the bill, H.R. 7679, which is a very interesting and innovative bill relating to insurance coverage for persons enjoying diplomatic immunity here in the United States.

[A copy of H.R. 7679 follows:]

95TH CONGRESS
1ST SESSION

# H. R. 7679

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1977

Mr. DANIELSON introduced the following bill; which was referred to the Committee on the Judiciary

# A BILL

To amend title 28, United States Code, to provide for actions against insurers on claims against persons entitled to diplomatic immunity.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) chapter 85 of title 28, United States Code, is amended by the addition of the following new section:

**"§ 1364. Actions against insurers involving claims against members of missions and their family members**

"(a) Any person having a claim arising in the United States against an individual who is a member of a mission or is a member of the family of a member of a mission as

defined in the Vienna Convention on Diplomatic Relations may bring an action on such claim, regardless of the amount in controversy, in any district court against any person who by contract has insured such individual against liability with respect to such a claim, within the terms and limits of such contract.

"(b) In any action brought under subsection (a), it shall not be a valid defense that the insured is immune from suit, that the insured is an indispensable party, or, in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.".

(b) The chapter analysis of chapter 85 of title 28, United States Code, is amended by the addition of the following item:

"1364. Actions against insurers involving claims against members of missions and their family members."

Mr. DANIELSON. First of all, we have with us the Honorable Dante Fascell, who, as a member of the Committee on Foreign Affairs, has been one of the proponents of revising and modernizing our laws relating to diplomatic immunity.

It was at Mr. Fascell's request or suggestion that I introduced H.R. 7679, which complements previous legislation which he introduced and which has passed the House, to give effect, practical effect, to the Vienna Convention of 1961, which became effective as to the United States on December 13, 1972.

Without further ado, we will call upon you, Mr. Fascell.

## TESTIMONY OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN THE CONGRESS FROM THE STATE OF FLORIDA

Mr. FASCELL. Thank you, sir.

Mr. Chairman and members of the subcommittee, I am here in strong support of the concept laid down in your bill, H.R. 7679. This bill will complement the bill to which you referred, H.R. 7819, which has recently passed the House, and we hope will be acted on by the Senate shortly.

I have a prepared statement, Mr. Chairman, that I would like to submit for the record.

Mr. DANIELSON. Without objection, the statement will be received in the record. We will appreciate your just giving us arguments for or against its enactment.

[The prepared statement of Hon. Dante B. Fascell follows:]

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I am pleased to be here to testify in favor of H.R. 7679, the direct action statute lutroduced by Chairman Danielson, which would close a loophole still remaining after passage of H.R. 7819, the Diplomatic Relations Act. As the distinguished Members know, this latter bill passed the House July 27, after having been marked up by the House International Relations Subcommittee on International Operations, which I chair.

The Diplomatic Relations Act will complement the Vienna Convention on Diplomatic Relations, which entered into force for the United States in 1972. The Convention's principal purpose is to codify the customary practice of nations concerning the granting of privileges and immunities to the diplomatic community by defining categories of diplomats and the types of immunity to which they are entitled. The principal purpose of the Diplomatic Relations Act is to repeal a 1790 statute which conflicts with the Convention.

Following enactment of the Diplomatic Relations Act, however, there will be a category of diplomats who will be in a position to escape liability for certain unofficial acts. These are "diplomatic agents", which include ambassadors and professional staff, as well as their families, who possess full immunity from the civil and criminal jurisdiction of the United States with only three minor exceptions. If such an individual is involved in a traffic accident, he could not be sued. If he is on official business when the accident occurs, recourse can be had against the country which he represents, as provided in the Foreign Sovereign Immunities Act.

However, if the diplomatic ageut is on private business, his immunity will shield him and the foreign state he represents cannot be sued. Even if he has liability insurance, as required by the Diplomatic Relaitons Act, the insurance company can plead the defense of diplomatic immunity.

This is the reason H.R. 7679 is necessary. It will provide recourse directly against an insurer in cases where diplomatic immunity prevents suit against a diplomatic agent.

Mr. Chairman, this bill is particularly necessary when one considers the numbers involved. In Washington, D.C. alone, the diplomatic community numbers 19,000. Of this number fully 8,000, which includes families, will still possess full immunity following enactment of the Diplomatic Relations Act. In New York City, the United Nations official community numbers some 5,000. The bill before you would provide protection for Americans with respect to this group of 13,000 individuals. I urge the subcommittee to report H.R. 7679 favorably.

STATISTICS RE DIPLOMATIC IMMUNITY—WASHINGTON, D.C., AND NEW YORK CITY

| Personnel | Immunity | Number | Total |
|---|---|---|---|
| Washington, D.C.: | | | |
| Top ranking diplomatic staff and their families | Full civil and criminal: (Diplomats) | 2,246 | 7,861 |
| | (Family) | 5,615 | |
| Administrative and technical staff | Full criminal, official acts civil | 2,877 | |
| Family | Full criminal, no civil | 7,192 | 10,342 |
| Service staff | Official acts immunity from civil and criminal jurisdiction. | 273 | |
| Private servants of members of a mission | No immunity | 606 | 606 |
| Total | | | 18,809 |
| New York City: | | | |
| U.N. permanent mission representatives and their families. | Full civil and criminel | 1,320 | |
| | | 3,300 | |
| U.N. officials and their families | do | 40 | |
| | | 100 | |
| Total | | | 4,760 |
| Total number of persons in the diplomatic community in Weshington and New York | | | 23,569 |

Mr. FASCELL. The Diplomatic Relations Act, H.R. 7819, repealed a 1790 statute which has been interpreted to grant absolute immunity from legal process to all foreign officials in the United States.

Under the Vienna Convention on Diplomatic Relations, which has been in force with respect to the United States since 1972, the only people who are granted full civil and criminal immunity are top ranking diplomatic staff and their families.

Other foreign officials, such as administrative and technical staff, have full criminal immunity, but immunity on the civil side only for their official acts. Their families have full criminal immunity, but no civil immunity.

H.R. 7819, also imposes an insurance requirement on all members of the diplomatic community who plan to operate motor vehicles, vessels or aircraft in the United States.

However, we also need H.R. 7679, because if a claim of immunity is made, the defense of immunity can also be used by the insurer of the diplomat. So, we must provide for some kind of direct action, and basically that is what H.R. 7679 does.

So, the two bills have to go forward together, if we are going to have a workable system.

Mr. DANIELSON. Let me ask you this.

H.R. 7819, in effect, is a condition-precedent to the utility of the bill of which I am the author.

Mr. FASCELL. That is right, yes.

Mr. DANIELSON. However, your bill, 7819, has passed the House.

Mr. FASCELL. It is on its way to the Senate.

Mr. DANIELSON. Right. As I understand it, the indications are that it is going to go through without much problem over there.

Mr. FASCELL. I would think so, Mr. Chairman. There is considerable interest in the other body in the bill. I have not talked to my counterpart, Senator McGovern, yet. I haven't had a chance to. I expect to talk to him today to speed up the process of passage.

The main thing, as you point out, is that H.R. 7819 establishes a mandatory liability insurance requirement for all embassy personnel and their families if they plan to operate a vehicle or a boat or an airplane in the United States.

But even if they meet the mandatory requirement for insurance, and a valid claim of immunity is made, there is still no recourse against the insurance company.

Mr. DANIELSON. But, as of today, these persons who are granted immunity are not required to carry liability insurance?

Mr. FASCELL. That is correct, although a great many of them do.

Mr. DANIELSON. They are not required to.

Mr. FASCELL. That is correct.

Mr. DANIELSON. Those who carry it voluntarily are still cloaked with their immunity, however, today?

Mr. FASCELL. That is correct.

Mr. DANIELSON. Under H.R. 7819, which implements this Vienna Convention, to which the United States is a party——

Mr. FASCELL. Right, since 1972.

Mr. DANIELSON. The Vienna Convention on Diplomatic Relations—under it, if 7819 becomes law, foreign agents accredited in the United States will be required to carry liability insurance.

Mr. FASCELL. That is right.

Mr. DANIELSON. But the problem then would arise: How do you bring a civil action against them without naming them as a party, and then they may assert diplomatic immunity on being named as a party?

Is that correct so far?

Mr. FASCELL. That is correct.

Mr. DANIELSON. Therefore, with the proposed bill, it would become possible to bring a direct action against the insurer and it would not be a defense that the insured is not named as a party in the civil action.

Mr. FASCELL. That is the theory, Mr. Chairman.

Now, I don't presume to be an expert in insurance law. I have not researched this. I have been advised that the language in this bill follows pretty much what is now being done in several States in the United States.

I notice that insurance company representatives are here. All I can say is what we have done so far has been worked out through the excellent cooperation of the State Department and the Justice Department. Representatives of both departments are here today.

Mr. Hampton Davis and Bruno Ristau both can respond to the technical questions, and the legal questions, with regard to H.R. 7679 as it may affect either our bill or the industry. I am sure the industry can speak for itself.

Mr. DANIELSON. I gather that you favor the passage of H.R. 7679.

Mr. FASCELL. Yes, sir.

Mr. DANIELSON. Mr. Moorhead.

Mr. MOORHEAD. I have no questions.

Mr. DANIELSON. Mr. Mazzoli?

Mr. MAZZOLI. I have no questions, Mr. Chairman.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. I do have a couple of questions.

I am a little uncertain about the mechanics of this, and would appreciate your thoughts on this, Mr. Fascell.

First, there is no language in the bill that establishes the principle of preemption, Federal preemption. I take it that we don't need that because there will be no State law or State case law to be overcome here. Is that right?

Mr. FASCELL. That is my understanding of it, Mr. Kindness. In other words, there is no reason why——

Mr. DANIELSON. Would the gentleman yield?

Mr. KINDNESS. Certainly.

Mr. DANIELSON. Over the weekend I have researched this bill, and the law which it would amend, chapter 85, title 28. This bill is drafted in a manner that doesn't quite fit the form of the chapter 85 statutes.

As to your first question, the premise is correct—it does not preempt, the way it is presently drafted. I will suggest an amendment to the bill to bring it into conformity with the style followed in chapter 85—and it would not then preempt, either, but it would be clear that it does not preempt.

The suggested language that I will have is that jurisdiction will be in the district courts concurrent with the courts of the States overall, et cetera. So it will not be preemptive.

The courts of States will have the ability and the right to enforce, or would have, I should say, if the law is passed, along with the Federal courts.

Mr. KINDNESS. Following up, it occurs to me there is one area of preemption or partial preemption that remains; that is, how you get over the problem of naming the insurer as a party without the insured being named as a party.

That does probably get us into concern about State laws.

Mr. FASCELL. You mean as to whether or not the insurer is an indispensable party by law?

Mr. KINDNESS. Yes.

Mr. FASCELL. Mr. Ristau, do you want to tackle that one?

Mr. DANIELSON. I am going to defer that until Mr. Ristau is called as a witness.

Mr. FASCELL. I have not looked at the law that deeply.

Mr. KINDNESS. Just one other question, and this is philosophical perhaps in a way. How do we get insurance companies—and perhaps we get this answer from the representatives of the insurance companies—to sell policies, to insure someone who cannot assert the defense of diplomatic immunity? I guess with a premium difference or something.

Mr. FASCELL. Yes; I don't want to be short about an answer, but they do it in other places. So there must be a way of doing it, whatever that is. I am sure there must be a way.

Mr. KINDNESS. I am just wondering whether we need to be concerned with that in the context of this legislation.

Mr. FASCELL. Sure. If it is a fact that no insurer will insure, then you have not accomplished anything, so you have to be practical about it, both in terms of profit and liability and the right to recover. I think the insurance industry has a right to be heard.

As I said, similar direct action statutes are in effect in some of the States. After all, the right to claim immunity as a defense stems from the statutory grant of immunity itself. It is not automatic. There is no reason why you have to grant it as a defense for an insurer.

The same is true of parties to a suit. You can write the statute any way you want to, as I see it. The question that is involved, it seems to me—and as I say, I don't know the position of the industry—is the right of recovery. It is easy enough to write the policy.

If you are the insurer, how do you get your money back? I think that is the $64 question.

Mr. MAZZOLI. $64,000 question.

Mr. FASCELL. $64,000 question. Excuse me.

Mr. DANIELSON. Mr. Moorehead?

Mr. MOORHEAD. I have just one question. Not how you get an insurance company to sell the policy, because I know you can get people to sell anything.

Mr. FASCELL. They would love to sell a policy and then claim immunity.

Mr. MOORHEAD. How are you going to get the diplomat to buy it, when he has immunity. The rates, obviously, would be relatively high.

Mr. FASCELL. The answer to the first question is because we provide by law a mandatory requirement for the purchase of insurance.

Mr. MOORHEAD. So everyone would have to have it.

Mr. FASCELL. Yes, sir, that is the other bill. These two bills go together.

I want to thank you very much, Mr. Chairman. It is obvious that H.R. 7819 has got to go through. It is also obvious that, to make it fully effective, we need some kind of direct action statute. We can get by without it, but it would be a lot better with it.

Mr. DANIELSON. Mr. Fascell, in a nutshell, our bill must depend upon your bill for its effectiveness.

Mr. FASCELL. And vice versa, Mr. Chairman.

Mr. DANIELSON. I notice that Mr. Harris of Virginia has arrived.

Mr. Harris, did you wish to inquire?

Mr. HARRIS. Mr. Chairman, may I say I want to apologize for not being here for Mr. Fascell. Over the past 20 years in Washington I have learned when Mr. Fascell is talking, to listen. Had I not been up in a meeting this morning, I would have been here.

I have read your statement, and I appreciate the leadership that you have taken in correcting one part of this problem. I think this committee has a real responsibility to move ahead on this.

Mr. FASCELL. Thank you, Mr. Harris. There is no question about it. This complementary legislation is vital to this overall program of responsibility. There are some problems, but I am sure with your intelligence you can work them out.

Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you very much, Mr. Fascell. We appreciate your testimony.

We are delighted to have with us Senator Mathias from Maryland. Won't you please come forward?

## TESTIMONY OF HON. CHARLES McC. MATHIAS, JR., A SENATOR IN THE CONGRESS FROM THE STATE OF MARYLAND

Mr. MATHIAS. Thank you, Mr. Chairman. I have a statement which I would be glad to submit for the record, and then very briefly summarize it.

Mr. DANIELSON. Would you, please? Without objection, the statement will be received in the record.

[The prepared statement of Hon. Charles McC. Mathias follows:]

STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Mr. Chairman, I welcome the opportunity to come before your Subcommittee and share my views on H.R. 7679, which would provide for direct actions against insurers ou claims agaiust individuals holding diplomatic immunity.

As you may know, earlier this year I introduced two bills, S. 1256 and S. 1257, aimed at achieving two important interrelated goals: (1) modernizing our diplomatic immunity laws and (2) helping insure that Americans who suffer personal injury and property damage in traffic accidents involving diplomatic personnel are not left without remedy.

S. 1256 would repeal our antiqnated 1790 diplomatic immnnity statute and replace it with the far more reasonable provisions of the Vienna Convention on Diplomatic Relatious, which makes the degree of immnnity commensurate with the rank and duties of the diplomatic personnel. S. 1256 is similar to H.R. 7819 passed by the House of Representatives last week and sent to the Senate for its consideration.

S. 1257 is aimed at insnring that persons injured in automobile accidents with diplomatic personnel are provided an efficient, sure means of adequate compensation. In addition to requiring diplomatic personnel to carry automobile liability insurauce, S. 1257 contains a provision similar to that found in H.R. 7679, allowing a direct suit against a diplomat's insurance compauy.

The importance of enactment of legislation of this nature is illustrated by a tragic incident which happened right here in Washington.

Almost three years ago, a married couple—both prominent Washington physicians—were driving in the District of Columbia when a car ran a red light and slammed into their car. This accident totally disabled the female physician, Halia Brown, and deprived the Washington area of a skilled doctor at the peak of her talents. Compounding the tragedy was the failure of the victim to obtain any financial compensation from the offending driver to help offset the enormous medical costs incurred. For this was no ordinary accident. The driver of the other vehicle was shielded from legal suit by the doctrine of diplomatic immunity. The only recourse was to file a futile request to the driver's embassy for indemnification.

How can we permit such an intolerable and inequitable situation to exist? The answer lies in two major deficiencies in the system of diplomatic immunity that prevails in this country. First, our diplomatic immnnity law, unchanged since its enactment in 1790, provides absolute immnnity from criminal, civil and administrative jurisdiction for all diplomatic personnel, regardless of rank or duties and thus gives far broader diplomatic immunity than our envoys enjoyed abroad. Second, and equally serious, there is no adequate mechanism in this country to compensate individuals injured in traffic accidents involving diplomatic personnel. The law precludes you from suing diplomatic representatives, and, in fact, adds insult to injury, by subjecting to possible criminal penalties any one who attempts to bring such a legal action.

Congress has not been oblivious to these inequities and of the need for prompt, effective reform of our diplomatic immnnity laws. As I noted earlier, last week the House took the important steps of passing H.R. 7819 which would:

Repeal our out-moded 1790 statute;

Make the Vienna Convention on Diplomatic Relations the sole basis for determining diplomatic privileges and immnnities in the United States; and

Require all foreign diplomatic personnel in the United States who plan to operate cars, airplanes or vessels to carry liability insurance.

And, last year Congress took a step in the right direction toward developing a system to insure that Americans injured in accidents with diplomatic personnel receive adequate and just compensation by passing "The Foreign Sovereign Immunities Act of 1976" (Public Law 94–583). This Act provides, with certain limitations, for an injured party to file suit for money damages against a foreign nation for the tortious acts or omissions committed by its representatives within the scope of their employment.

But, "The Foreign Sovereign Immunities Act" has one loophole: it does not cover acts committed outside the official duties of the diplomatic personnel. Thus, additional legislation is needed to complement both H.R. 7819 and Public Law 94–583, and allow for recovery in those cases where the traffic accident involved situations where the diplomatic representative was operating outside the scope of his or her employment.

As I indicated at the time I introduced S. 1257, in seeking to adopt an appropriate procedure to provide for adequate compensation for injured Americans, it must be remembered that Congress cannot infringe upon the invioability of a diplomat from legal suit. Consequently, a procedure merely requiring a diplomat to carry motor vehicle liability insurance—such as found in H.R. 7819—standing alone, would not insure an opportunity to obtain just compensation since the diplomat would still be immune from suit. Therefore, compulsory liability insurance must be coupled with a mechanism providing for direct enforcement of the policy against the insurer without impinging upon the important protections afforded those enjoying diplomatic immunity. I am convinced that the concept of a federal direct action statute as contained in both S. 1257 and H.R. 7679, is an appropriate means of insuring that Americans injured in accidents with foreign diplomatic representatives are not left without legal recourse.

In considering whether to incorporate into federal law a direct cause of action statute in cases involving diplomatic personnel, it should be noted that this is not a novel concept. Several States have enacted statutes providing for a direct cause of action against insurance companies under various circumstances.

Moreover, the United States Supreme Court in the seminal case of *Watson* v. *Employers Liability Corp.*, 348 U.S. 66 (1954), upheld the constitutionality of Louisiana's direct action statute, which allows persons injured in Louisiana to sue liability insurance companies insuring tortfeasors.

Equally significant, I have been informed by the Department of Justice that for almost twenty years several Western European countries have been party to "The European Convention on Compulsory Insurance Against Civil Liability in Respect of Motor Vehicles." This Convention not only provides that individuals must carry automobile liability insurance, but also requires that cooperating jurisdictions must enact their own direct action legislation. Since H.R. 7819 would bring us in line with general Western European practice by mandating auto liability insurance, it would seem appropriate that Congress seriously consider enacting companion direct action legislation.

As a Senator from a State where a large number of individuals possessing diplomatic immunity live, I am keenly aware both of the need for modernizing exiting laws to bring them in conformity with current international practice and the need to devise a mechanism to insure that Americans injured in auto accidents are not left without redress. At the same time, I am in agreement with the scope of diplomatic immunity provided by the Vienna Convention and recognize that the purpose of such immunity is not to benefit individuals, but to ensure the efficient performance of diplomatic duties. This purpose can be fulfilled best if the concept of diplomatic immunity keeps pace with the theory of risk sharing contained in our developing law of insurance.

Once again, Mr. Chairman, I appreciate the opportunity to be able to testify before the subcommittee and applaud your efforts for taking the lead in this area by scheduling these hearings.

Mr. DANIELSON. I don't think we have ever had the pleasure of having you with us before. I hope the pleasure is the same on each side.

Mr. MATHIAS. It is not only a pleasure, but an honor. I am delighted to be here and have a chance to talk to you very briefly about this problem of diplomatic immunity.

I have myself introduced in the Senate two bills, 1256 and 1257, which were aimed at achieving the two important interrelated goals of

modernizing diplomatic immunity laws, and helping to insure that Americans who suffer personal injury and property damage in accidents involving diplomatic personnel are granted proper compensation.

S. 1256 would repeal the 1790 diplomatic immunity statute, and substitute the provisions of the Vienna Convention, which are generally agreed as being reasonable in the modern climate. S. 1257 is aimed at insuring that persons who are injured are provided with an efficient means of recovery.

I think the cases are so familiar to the committee, I don't have to review them. The famous case of Dr. Halla Brown, a professional totally disabled, totally without recourse.

We had a case of some local notoriety in Maryland, where four or five cars parked on the street in a small town were totally demolished. In that case, the government involved did finally make some restitution. But that was as a matter of grace and favor, and not as a matter of right or law.

So, it is a very unsatisfactory situation and one that we cannot continue to allow to persist.

Now, the House has already taken the first step, of course, in the passage of the bill which would repeal the 1790 act. But I would point out that last year Congress took another step in the right direction, and that was by passing the Foreign Sovereignty Immunities Act of 1976, which provides with certain limitations for right of suit against a foreign nation for an act committed by its representatives within the scope of their employment.

Of course, that is a very big loophole because when a diplomatic representative roared down the streets of Newmarket, Md., at 2 or 3 o'clock in the morning, it would have been hard to claim that he was acting within the scope of his employment—with all the surrounding circumstances that were known at the time.

What we have to do is to provide for comprehensive coverage. That is what 1257 would do, because it does provide for a system of compulsory insurance. It goes further because, of course, Congress cannot infringe upon the inviolability of a diplomat from the suit.

So, a mere procedure requiring the diplomat to carry insurance, such as that found in H.R. 7819, standing alone, would not insure an opportunity to obtain just compensation, since you would still have the diplomats' immunity from the suit.

Therefore, compulsory liability insurance has to be coupled with a mechanism providing for direct enforcement of the policy against the insured, without impinging upon the important restrictions afforded to those who have diplomatic immunity.

Now, this brings us to the question Mr. Kindness raised during Chairman Dante Fascell's testimony, which is; can you sue the insurer without directly involving the insured?

There was a case decided in the Supreme Court, *Watson* v. *Emloyers Liability Corporation*, in which the constitutionality of a Louisiana statute was upheld, which allowed persons injured in Louisiana to sue a liability insurance company insuring tortfeasors who were not subject or within the reach of the Louisiana courts.

So, I think that is a kind of seminal case which gives guidance here, and would indicate what we are proposing could be done.

Equally significant is the fact that for almost 20 years, several Western European countries have been party to the European Convention on Compulsory Insurance Against Civil Liability in Respect of Motor Vehicles.

This convention not only provides that individuals must carry automobile liability insurance, but also requires that cooperating jurisdictions must enact their own direct action legislation.

Since H.R. 7819 would bring us in line with general Western European practice by mandating automobile liability insurance, it would seem appropriate that Congress must seriously consider enacting companion direct action legislation.

I obviously have a deep concern about this because like Mr. Harris, many of my constituents are exposed to a high degree of risk. But, it is not limited to the Washington area. When you think of New York, with the large number of diplomatic personnel there, with growing consular establishments in places like New Orleans and San Francisco, it is a broad national problem.

I am very grateful to the committee for having set aside this time today to discuss it.

Mr. DANIELSON. Thank you, Senator Mathias.

I recognize the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Senator. This is certainly an area where so many people who are citizens are out there just waiting at the present time for some reckless driver that has immunity to strike them down without any possibility of recovery.

If we can cover some of these loopholes, it certainly might save the financial futures of some of the people in our country. I think this is a direction we undoubtedly have to go.

I have no further questions.

Mr. DANIELSON. Mr. Mazzoli?

Mr. MAZZOLI. Senator, it is good to see you. I believe I might correct the chairman. I believe you did appear before us last year on the national emergencies bill. Was that not the bill that you came to speak to our committee on, and that you drafted, I believe?

Senator MATHIAS. That is right. Incidentally, I saw, just over the weekend, that the time limit for the national emergency is about to expire. We are approaching the time of normality for the first time since President Franklin Roosevelt's administration, in about 1933.

Mr. MAZZOLI. I remember. I was very interested in your testimony because we traced the presently existing national emergency back to the bank closure of 1933 or 1934, which was quite surprising. I thank you for that help.

With respect to today, Senator, I just have one question. I gather from reading some of the testimony which will be presented to our committee today from the insurance groups that they worry about whether or not we have the authority to require in this case that the protected group of diplomats and families thereof, to take out insurance policies.

Are you satisfied from the hearings that you have had on the Senate side, and from your examination, that inded the Government has this authority, and this would not be an intrusion upon certain kinds of diplomatic immunities?

Senator MATHIAS. I think it is pretty clear that we do have that authority.

The Congress, I think, is fully authorized to enact some sort of limited Federal direct action statute, as has been contemplated. I think certainly the general welfare requires it.

Conditions have so changed—when you think about the first diplomats who arrived in this new Republic, it probably included a minister and his wife, and maybe a clerk. Automobiles were not contemplated; all the other possible instruments of harm had not been invented.

I think very clearly the law, the general international consensus on this subject, and just the physical facts, require it.

Mr. MAZZOLI. Thank you, Senator.

Mr. DANIELSON. Mr. Kindness, of Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

Thank you, Senator, for your testimony this morning in support of this bill. I have a little bit of difficulty in getting from *Watson* v. *Employers Liability Corporation* to our current situation. I wonder if I might explore that a little bit with you.

Since that case involved the interpretation of a State statute and the determination of its constitutionality, I have difficulty getting from there to a Federal statute accomplishing the same thing, inasmuch as we have not fully asserted Federal preemption of the regulation of insurance law.

Would you care to comment in that area, as to whether we are actually getting into Federal regulation of insurance to some degree here? It appears to me that that is the case.

Mr. MATHIAS. I really would not think so because this does not deal directly with the question of insurance per se. We are dealing with a class of insureds, which is a different thing. We are dealing with a special class of insureds, and not with insurance, or with the insurers.

We are saying if they accept this insurance, they don't have to take the business, if they don't want it, it is up to them. We are not mandating them to take the business. We are saying if they take this business, they take it with the understanding that they won't plead diplomatic immunity of the insureds.

I think that is a reasonable provision. I think it is close to the Louisiana case.

Now, I would point out there is one difference between the House bill and the bill I have introduced, and that is I believe the House bill contemplates Presidential regulations providing for this direct action.

What we have contemplated is that the States would not issue either driving permits or tags unless there were satisfactory arrangements of this sort made.

Mr. KINDNESS. I think that may be a key element. I have a little concern about the diplomat who decides he is going to drive without a license or license plate. I don't know whether we have any way of keeping them off the road; that is, the ones that are protected by complete immunity.

Senator MATHIAS. I think they have to have some sort of local permit in order to operate motor vehicles. That is a pretty strong handle.

Mr. KINDNESS. This is an area about which perhaps we need to make a little further inquiry.

Thank you.

Mr. DANIELSON. Mr. Harris of Virginia.

Mr. HARRIS. Very briefly, Mr. Chairman, I want to welcome the Senator from Maryland. I recognize his activity in this area, and the leadership that he has taken. He and I both do share a common bond here, and I think have had some personal contacts that raise emotions on this issue.

We have worked on a particular case where a lady is almost completely paralyzed, has nothing but medical expenses and care to look forward to, yet is foreclosed from bringing any action to recover damages with respect to a terribly negligent act.

I would point out one thing; that is, that we passed this special legislation a couple of years ago, when a foreign diplomat was injured on the streets of Washington, to try to make whole to some extent the damages suffered by that foreign diplomat.

It seems to me early action on this type of legislation which allows the American citizen to recover from similar injuries, is terribly needed, and overdue.

Mr. MATHIAS. I agree.

Again, I would point out that although you and I have a special interest here, because of the high exposure of our constituents, we are by no means unique in this. There are other cities around the country today where increasingly diplomatic and consular personnel are living and involved, and each one of them has an interest of the same sort.

Mr. HARRIS. Senator, you and I know, too, that—I am always kidding some of my diplomat friends. There is no one that travels more in this country than someone in a diplomatic mission. Most of my diplomat friends have seen more of the country than I have, I think it is a nationwide problem, and not just a local one.

Mr. DANIELSON. Thank you, Mr. Harris.

Mr. Mathias, if you have something further to add, it is more than welcome. But, I don't want to impose on your time.

Mr. MATHIAS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you very much. We appreciate your help and advice.

We will now call Dr. Bruno Ristau, Chief of the Foreign Civil Litigation Section, Civil Division, of the Department of Justice. Dr. Ristau has filed a statement with us.

Dr. Ristau, we have your statement. Without objection, it will be received in the record.

[The prepared statement of Dr. Ristau follows:]

STATEMENT OF BRUNO RISTAU, CHIEF, FOREIGN LITIGATION SECTION, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the subcommittee:

I am Bruno A. Ristau, Chief of Foreign Civil Litigation in the Department of Justice.

I appear today pursuant to the invitation extended to the Department by Chairman Rodino, to submit the views of the Department of Justice on H.R. 7679—a bill which would provide for direct actions against insurers on claims against persons entitled to diplomatic immunity.

The bill is an adjunct to H.R. 7819—recently voted out of the Committee on International Relations—which would complement the 1961 Vienna Convention on Diplomatic Relations by enacting the privileges and immunities provisions of

that convention as the sole United States law on the subject; repeal inconsistent federal legislation; and require all foreign diplomats in the United States to carry liability insurance against risks arising from the operation in the United States of motor vehicles, vessels or aircraft.

The Department of Justice considers it imperative that H.R. 7679 be enacted if the United States is to modernize fully and comprehensively its laws dealing with the redress which citizens of this country may obtain in our courts against foreign states and officials of foreign states. I was privileged to work with this subcommittee in the 93d and 94th Congresses in connection with a legislative proposal designed to afford our citizens access to our courts and an opportunity to assert commercial and tort claims against foreign states. That proposal was enacted into law last year as the Foreign Sovereign Immunities Act of 1976. That act has significantly contributed to the advancement of the rule of law in the relationship between foreign states and individuals; but, as noted, it deals only with claims against foreign states themselves.

The proposed Diplomatic Relations Act voted out by the House Committee on International Relations will further bring the policies and practices of the United States into line with the requirements of our times.

H.R. 7679 will, in our view, complete the circle and fill the gap still left open by the Foreign Immunities Act and by the proposed Diplomatic Immunities Act: It will provide an effective remedy and ensure collectibility on claims against foreign diplomats under circumstances where diplomats themselves will remain personally immune from suit in the courts of our country.

The bill would cure a serious deficiency of our legal system which prevents an injured party from obtaining effective redress from a foreign diplomat's insurance carrier. This deficiency is due to the common law rule requiring a negligently injured party is to assert its damage claim against the tortfeasor personally, and denying the injured party the opportunity to reach directly any proceeds under a contract of indemnity or insurance which the tortfeasor may have with a third party. Indeed, at common law, the mere mention of "insurance" at trial could lead to a mistrial.

The enactment of a Federal "direct action" statute applicable to insurance policies issued to persons who enjoy personal immunity from suit as a matter of Federal (treaty) law would, in our view, go a long way in remedying that deficiency. The idea of a direct action statute is certainly not new. Numerous States of the Union have had on their books for several decades statutes permitting direct actions against insurers under a variety of circumstances. We have, for the committee's convenience, reprodnced in Appendix "A" to this statement examples of such progressive legislation to be found in Louisiana, Puerto Rico, and Wisconsin, and we cite other statutes which subject insurers to suit under a variety of circumstances.

In at least one instance that we are aware of, the right to proceed directly against an insurer was created by the courts. In *Shingleton* v. *Bussey*, 223 So. 2d 713 (1969), the Supreme Court of Florida held that under Florida law an injured party was a third-party beneficiary of a motor vehicle liability policy and had a direct cause of action against the insurer (overruling earlier case law which had denied such right). The following language of the Supreme Court of Florida is most apposite to H.R. 7679:

"It cannot be disputed that securance of liability insurance coverage protection for the operation of a motor vehicle, regardless of whether the policy is secured to meet the requirements of Ch. 324, F.S., is an act undertaken by the insured with the intent of providing a ready means of discharging his obligations that may accrue to a member or members of the public as a result of his negligent operation of a motor vehicle on the public streets and highways of this state.

"Viewed in this light, we think there exists sufficient reason to raise by operation of law the intent to benefit injured third parties and thus to render motor vehicle liability insurance amenable to the third party beneficiary doctrine.

Once it is established that a person injured by the act of an insured while operating a motor vehicle is a party entitled to maintain a cause of action directly against the liability insurer of the tort-feasor, the question then presented is when may the injured party exercise his right to bring suit on the cause of action vested in him. Resolution of this question entails the effect to be attributed to rules of civil procedure and provisions of the policy as well as the process of weighing and measuring certain countervailing public policies."

* * * * * * *

"In reaching the foregoing conclusion, we are cognizant that the primary reason advanced in those jurisdictions which have sustained "no joinder clauses" in the area of liability insurance is that such a clause serves to prevent prejudice to the insurer through the prophylactic effect of isolating from the jury's consideration any knowledge that coverage for the insured exists. Such a result is deemed desirable because of the notion that a jury is prone to find negligence or to augment damages, if it thinks that an affluent institution such as an insurance company will bear the loss. See Appleman, 8 Insurance Law and Practice, § 4861. While we will not go so far as to assert that the above proposition has been all but obliterated by the more recent indications to the effect that the injection of insurance does not operate to increase the size of jury verdicts, we do think the stage has now been reached where juries are more mature. Accordingly, a candid admission at trial of the existence of insurance coverage, the policy limits of same, and an otherwise aboveboard revelation of the interest of an insurer in the outcome of the recovery action against insured should be more beneficial to insurers in terms of diminishing their overall policy judgment payments to litigating beneficiaries than the questionable ostrich head in the sand approach which may often mislead juries to think insurance coverage is greater than it is." [223 So. 2d at 716, 718.]

None of the jurisdictions in which the problem of traffic accidents caused by foreign diplomats is most pronounced—the District of Columbia, Virginia, Maryland and New York—has a direct action statute. A Federal direct action statute would create a Federal substantive right, enforceable in Federal or state courts, to proceed for damages directly against the insurers of foreign diplomats.

We have done some comparative research to determine how other countries cope with the problem of damage claims against foreign diplomats involved in traffic accidents. As an example, we reproduce in Appendix "B" to my statement the "European Convention on Compulsory Insurance against Civil Liability in Respect of Motor Vehicles" of April 20, 1959, 720 U.N.T.S. 119 (1970), which is now in force in most countries of Western Europe. That multilateral convention requires each signatory state to enact domestic legislation providing for mandatory insurance and a right in the injured party to proceed directly against insurers. As a result, American diplomats stationed in these countries have for many years been required to carry liability insurnace on their privately-owned vehicles, and the direct action feature of the legislation enacted in the countries of the European Community allows individuals who are injured by our diplomats to recover compensation directly from the insurers of our diplomats. As you can see, the European Community is well ahead of us in remedying the problems created by diplomatic traffic accidents. Indeed, it is safe to say that the problems of diplomatic immunity which continue to vex the Congres and the Executive Branch are wholly unknown in Europe. I believe we should learn from the Continental experience; it is my understanding that the direct action statute scheme has worked extremely well in Europe.

It may also be profitable for me to point out that when the states of our Union first began enacting direct action statutes, the statutes were subjected to close judicial scrutiny. In the landmark case of *Watson* v. *Employers Liability Corp.*, 348 U.S. 66 (1954) the Louisiana direct action statute was challenged on every conceivable constitutional ground. A unanimous Supreme Court rejected all challenges and held:

(*a*) The statute is constitutional even when applied to a policy written and delivered in another state which recognizes as binding and enforceable a provision of the policy forbidding such direct actions;

(*b*) The statute does not violate the Equal Protection Clause of the Constitution since its provisions fall with equal force upon all liability insurance companies, foreign and domestic, and there is no evidence of any discriminatory application of them;

(*c*) The statute does not violate the Contract Clause of Art. I, § 10, of the Constitution; since the direct action provisions became effective before the insurance contract sued on was made;

(*d*) The statnte does not violate the Due Process Clause of the Constitution, since Louisiana has a legitimate interest in safeguarding the rights of persons injured there;

(*e*) The Full Faith and Credit Clause of the Constitution does not compel Louisiana to subordinate its direct action provisions to the contract laws of a sister-state, where the insurance policy was issued.

There can be no question that Congress is fully authorized to enact a limited federal direct action statute as envisaged by H.R. 7679. Although under the Commerce Clause of the Constitution Congress could undoubtedly enact a general federal direct action statute, H.R. 7679 is less ambitious; it draws on Congress power over international affairs. Since the immunity of foreign diplomats from suit is a privilege accorded by federal law, Congress has a legitimate interest in protecting the rights of persons injured in the United States by those who enjoy a federal immunity from suit.

If Congress has the power to require that foreign diplomats obtain liability insurance as a condition to driving in the United States—as H.R. 7819 would mandate—Congress can, by parity of reasoning, also ensure that the insurance affords effective redress to the injured person by allowing determination of the person's claim in the courts, and not leaving the injured person at the mercy of an insurance adjustor.

Mr. Chairman, the Department of Justice wholeheartedly and without qualification supports H.R. 7679.

## APPENDIX A

### LOUISIANA REVISED STATUTES, TITLE 22 (INSURANCE CODE)

§ 655. *Liability policy; insolvency or bankruptcy of insured; direct action against insurer*

No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action against the insurer may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors or heirs mentioned in Revised Civil Code Article 2315. The injured person or his or her survivors or heirs hereinabove referred to at their option, shall have a right of direct action against the insurer within the terms and limits of the policy in the parish where the accident or injury occurred or in the parish where the insured or insurer is domiciled, and said action may be brought against the insurer alone or against both the insured and insurer jointly and in solido, at the domicile of either or their principal place of business in Louisiana. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the state of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of Louisiana. Nothing contained in this Section shall be construed to affect the provisions of the policy or contract if the same are not in violation of the laws of this state. It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contracts are not in violation of the laws of this state.

It is also the intent of this Section that all liability policies within their terms and limits are executed for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable; and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insureds or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tort feasor within the terms and limits of said policy. Amended and reenacted Acts 1958, No. 125.

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### LAWS OF PUERTO RICO, TITLE 26 (CASUALTY INSURANCE)

§ 2001. *Liability insurer's liability absolute*

The insurer issuing a policy insuring any person against loss or damage through legal liability for the bodily injury, death, or damage to property of a third person, shall become absolutely liable whenever a loss covered by the policy occurs, and payment of such loss by the insurer to the extent of its liability there-

for under the policy shall not depend upon payment by the insured of or upon any final judgmeut against him arising out of such occurrence.—Ins. Code § 20.010.

§ 2002. *Retroactive annulment*

No insurer shall retroactively annul any liability insurance policy by any agreement between the insurer and insured after occurrence of any injury, death, or damage to a third person for wbich the insured may he liable, and any such aunulment attempted sball be void.—Ins. Code § 20.020.

§ 2003. *Suits against insured, insurer*

(1) Any individual sustaining damages and losses shall have, at his option, a direct action against the insurer under the terms and limitations of the policy, which action he may exercise against the insurer only or against tbe insurer and the insured jointly. The liability of the insurer shall not exceed that provided for in the policy, and the court shall determine, not only the liability of the insurer, but also the amount of the loss. Any action brought under this section shall be subject to the conditions of the policy or contract and to the defenses that may be pleaded by the insurer to the direct action instituted by the insured.

(2) If the plaintiff in such an action brings suit against the insured alone, such shall not be deemed to deprive him of the right, by subrogation to tbe rigbts of the insured under the policy, to maintain action against and recover from the insurer after securing final judgment against the insured.—Ins. Code § 20.030

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WISCONSIN STATUTES ANN. (CIVIL ACTIONS—PARTIES)

§ 260.11. *Who as defendants*

(1) Any person may be made a defendant wbo has or claims an interest in the controversy adverse to tbe plaintiff, or who is a necessary party to a complete determination or settlement of tbe questions involved therein. A plaintiff may join as defendants persons against whom the right to relief is alleged to exist in the alternative, although recovery against one may be inconsistent with recovery against the other; and in all such actions the recovery of costs by any of the parties to the action shall be in the discretion of the court. In any action for damages caused by the negligent operation, management or control of a motor vehicle, any insurer of motor vehicles, which has an interest in the outcome of such controversy adverse to the plaintiff or any of the parties to such controversy, or wbich by its policy of insurance assumes or reserves the right to control tbe prosecutiou, defense or settlement of the claim or action of the plaiutiff or any of the parties to such claim or action, or which by its policy agrees to prosecute or defend the action brought by tbe plaintiff or any of the parties to such action, or agrees to eugage counsel to prosecute or defend said action, or agrees to pay the costs of sucb litigation, is by this section made a proper party defendant in any action brought by plaintiff ou account of any claim against the insured.

See also: Ark. Stat. Ann. § 66–3240; Ill. Ann. Stat. cb. 73, § 1000; Kan. Stat. Ann. § 66–1, 128; Ky. Rev. Stat. Ann. § 426.381; Ohio Rev. Code Ann. § 3929.06; Okla. Stat. Anu., tit 47, § 169; R.I. Gen Laws §§ 27–7–1, 27–7–2; S.C. Code § 46–750.16; Tenn. Code Ann. § 59–1223; and Vt. Stat. Ann. tit. 23, § 842.

## APPENDIX B

No. 10345

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MULTILATERAL

European Convention on compulsory insurance against civil liability in respect of motor vehicles (with annexes and Protocol of signature). Done at Strasbourg on 20 April 1959.

Authentic texts: English and French.

Updated on 6 March 1970 by the Council of Europe acting on behalf of the Contracting Parties, in accordance with resolution 54(6) of the Committee of Ministers of tbe Council of Europe adopted on 3 April 1954.

## EUROPEAN CONVENTION[1] ON COMPULSORY INSURANCE AGAINST CIVIL LIABILITY IN RESPECT OF MOTOR VEHICLES

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its Members for the purpose, among others, of facilitating their economic and social progress by the conclusion of agreements and common accord in economic, social, cultural, scientific, legal and administrative matters;

Considering it necessary to safeguard the rights of victims of motor vehicle accidents in their territories by the introduction of a system of compulsory insurance.

Considering that it would be difficult to secure the complete unification of the laws in this matter and that it would suffice if such basic rules as are considered essential were standardised in the member countries of the Council of Europe each country remaining free to apply in its territory provisions affording great protection to injured parties:

Considering it necessary moreover to promote the establishment operation of international insurance bureaux and guarantee funds, or to equivalent measures,

Have agreed as follows:

### ARTICLE 1

1. Each Contracting Party undertakes to ensure that, within six months of the date of entry into force of this Convention in respect to that Party rights of persons suffering damage caused by motor vehicles in its territory be protected through the introduction of a system of compulsory insurance complying with the provisions annexed to this Convention (Annex I).

2. Each Contracting Party shall, however, retain the option of adopting provisions affording greater protection to injured parties.

3. Each of the Contracting Parties shall communicate to the Secretary General of the Council of Europe the official texts of the legislation and principal regulations establishing its system of compulsory motor insurance. The Secretary-General shall transmit these texts to the other Parties and to the other Members of the Council of Europe.

### ARTICLE 2

Each Contracting Party shall retain the option:

1. to exempt from compulsory insurance certain motor vehicles, the use of which it considers to present little if any danger;

2. to exempt from compulsory insurance motor vehicles owned by its public authorities or those of other countries or by inter-governmental organisations;

3. to determine the minimum amounts of insurance cover necessary; in this case, the application of the annexed provisions may be limited to these amounts.

### ARTICLE 3

1. Any Contracting Party may, when signing this Convention or on depositing its instrument of ratification or accession, declare that it avails itself of one or more of the reservations provided for in Annex II to the Convention.

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[1] Came into force on September 22, 1969, that is to say, 90 days after the deposit with the Secretary-General of the Council of Europe of the 4th instrument of ratification, in accordance with article 15. Following is the list of States having deposited their instruments of ratification indicating, in respect of each State, the date of deposit of the instrument and the date of entry into force of the Convention:

| State | Date of deposit of instrument | Date of entry into force |
|---|---|---|
| Greece | May 26, 1961 | Sept. 22, 1969 |
| Norway | Sept. 16, 1963 | Do. |
| Federal Republic of Germany | Jan. 5, 1966 | Do. |
| Denmark | June 24, 1969 | Do. |
| Sweden | June 26, 1969 | Sept. 24, 1969 |

NOTE.—All with a declaration made on ratification. See p. 144 of this volume.

2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a notification addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt. The Secretary-General shall communicate the notification to the other Parties and to the other Members of the Council of Europe.

ARTICLE 4

1. Options exercised and reservations made by a Contracting Party in pursuance of Articles 2 and 3 of this Convention shall be valid only in its territory and shall not prejudice the full application of the compulsory insurance law of other Parties in whose territory the vehicle is used.

2. Each Contracting Party shall inform the Secretary-General of the Council of Europe of the content of its legal provisions relating to the options and reservations referred to in Articles 2 and 3 of this Convention. The said Party shall keep the Secretary-General informed of any changes made therein at a later date. The Secretary-General shall transmit all such information to the other Parties and to the other Members of the Council of Europe.

ARTICLE 5

When compensation for injury caused by a motor vehicle involves both compulsory motor insurance and social security schemes, the rights of the injured party and the arrangements to be made between the two systems shall be determined under municipal law.

ARTICLE 6

1. Should the option of exclusion from normal insurance referred to in paragraph 2 of Article 4 of the annexed provisions be provided for in its municipal law, each Contracting Party undertakes to make the holding in its territory of motor races or competitions, whether for speed, reliability or skill, subject to official authorisation. Such authorisation shall be granted only if the civil liability of the organisers and the persons referred to in Article 3 of the annexed provisions is covered by special insurance complying with those provisions.

2. Compensation for damage suffered by the occupants of vehicles taking part in races or competitions such as are referred to in the foregoing paragraph may, however, be excluded.

ARTICLE 7

1. Motor vehicles normally stationed outside the territory of a Contracting State shall be exempt in that territory from the application of article 2 of the annexed provisions if they are provided with a certificate issued by the Government of another Contracting State stating that the vehicle belongs to that State, or, in the case of a Federal State, to the Federal State or one of its constituent members; in the latter case, the certificate shall be issued by the Federal Government.

2. The certificate shall indicate the authority or body responsible for paying compensation in accordance with the law of the country visited and which may be sued in the courts competent in such matters under that law. The State or constituent member to which the vehicle belongs shall guarantee such payment.

ARTICLE 8

The Contracting Parties shall promote the establishment and operation of Bureaux for the issue of international insurance certificates and for meeting claims for damages in the circumstances specified in paragraph 2 of Article 2 of the annexed provisions.

ARTICLE 9

1. Each of the Contracting Parties undertakes either to establish a guarantee fund or to make other equivalent arrangements in order to compensate injured parties for damage caused in such circumstances that a civil liability is incurred where the obligation to be insured has not been complied with or the person liable has not been identified, or the case is one excepted from insurance in accordance with the first sentence of paragraph 1 of Article 3 of the annexed

provisions. The conditions for granting compensation and the extent of such right shall be determined by the Contracting Party concerned.

2. Nationals of any Contracting Party shall be entitled to bring the claim provided for in the foregoing paragraph in any other Contracting State on equal terms with the nationals of that State.

ARTICLE 10

1. The Contracting Parties undertake to determine in their municipal law the persons who shall be responsible for having the motor vehicle insured and to take all appropriate measures, accompanied where necessary by penal or administrative sanctions, to enforce the obligations resulting from the annexed provisions.

2. With a view to the application of the annexed provisions, the Contracting Parties undertake to make appropriate provisions in their municipal law relating to the approval, or the expiry or withdrawal of the approval, of insurers and, if necessary, of the Guarantee Fund and the Bureau, and also relating to control of their operations.

ARTICLE 11

1. Each Contracting Party shall determine, as may be necessary, the authority or person to whom the notification mentioned in Article 9 of the annexed provisions is to be made.

2. Each Contracting Party shall determine what effect the insurance contract shall have in the case of a change of ownership of the insured vehicle.

ARTICLE 12

Except in case of emergency, a Contracting Party may not denounce this Convention within less than two years from the date on which the Convention entered into force in respect of that Party. Denunciation shall be effected by written notification to the Secretary-General of the Council of Europe, who shall inform the other Contracting Parties thereof; it shall take effect three months after the date on which the Secretary-General received such notification.

ARTICLE 13

1. If, after the entry into force of the Convention in respect of a Contracting Party, that Party deems it necessary to make a reservation, either not provided for in Annex II to this Convention or, if provided for in that Annex, a reservation which it has not made previously or has withdrawn, it shall inform the Secretary-General of the Council of Europe of its precise proposal, of which the Secretary-General shall then notify the other Contracting Parties.

2. If, within the six months following the notification by the Secretary-General, the Contracting Parties signify in writing their agreement to the proposal, the Contracting Party which has made the proposal may amend its legislation accordingly. The Secretary-General shall bring the notifications made to him under this paragraph to the knowledge of the Contracting Parties.

ARTICLE 14

This Convention shall not apply to overseas territories of the Contracting Parties.

ARTICLE 15

1. This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. This Convention shall come into force 90 days after the date of deposit of the fourth instrument of ratification.

3. In respect of any signatory ratifying subsequently, the Convention shall come into force 90 days after the date of deposit of its instrument of ratification.

4. The Secretary-General shall notify all the Members of the Council and acceding States of the names of the Signatories, of the entry into force of the Convention, the names of the Contracting Parties who have ratified it and the subsequent deposit of any instrument of ratification or accession.

ARTICLE 16

After this Convention has come into force the Committee of Ministers of the Council of Europe may invite any State which is not a Member of the Council to accede to it. Any State so invited may accede by depositing its instrument of accession with the Secretary-General of the Council, who shall notify all the Contracting Parties and the other Members of the Council of any State acceding thereto 90 days after the date of deposit of its instrument of accession.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Strasbourg, this 20th day of April 1959, in the English and French languages, both texts being equally authoritative, in a single copy which shall remain in the archives of the Council of Europe and of which the Secretary-General shall send certified copies to each of the Signatories.

ANNEX I—PROVISIONS ANNEXED TO THE CONVENTION

ARTICLE 1

For the purpose of this law:

The team "motor vehicles" shall mean: mechanically-propelled vehicles intended to be driven on the ground other than vehicles running on rails, and shall include trailers when coupled, and insofar as the Government so decides, uncoupled trailers which are constructed or adapted to be towed by a motor vehicle and to carry persons or goods;

The term "assured" shall mean: persons whose liability is covered in accordance with this law;

The term "injured parties" shall mean: persons entitled to compensation for damage caused by a motor vehicle;

The term "insurer" shall mean: the insurance undertaking approved by the Government in accordance with paragraph 1 of Article 2, and, in the case of paragraph 2 of Article 2, the Bureau responsible for the settlement of claims for damage caused in the national territory by vehicles normally stationed outside that territory.

ARTICLE 2

1. No motor vehicle may be driven on the public highway, in grounds open to the public or in private grounds to which certain persons have right of access, unless the civil liability to which it may give rise is covered by insurance in accordance with the provisions of this law.

The insurance must be effected with an insurer approved by the Government for this purpose.

2. Nevertheless, motor vehicle normally stationed outside the national territory may be driven in that territory on condition that a Bureau recognized for this purpose by the Government assumes direct responsibility for compensating, in accordance with municipal law, injured parties for damage caused by such vehicles.

ARTICLE 3

1. The insurance must cover the civil liability of the owner and of any driver or person in charge of the insured vehicle, with the exception of persons who have taken control thereof either by theft or violence or merely without the consent of the owner or person in charge. Nevertheless, in the latter case the insurance must cover the civil liability of the driver if he has been able to take control of the vehicle through the fault of the owner or person in charge, or if he is a person employed to drive the vehicle.

2. The insurance must include damage caused to persons and property in the national territory, with the exception of damage to the insured vehicle and to property carried by it.

ARTICLE 4

1. The following may be excluded from the benefits of the insurance:

(*a*) the driver of the vehicle causing the damage, the policy-holder and all persons whose civil liability is covered by the policy;

(*b*) the spouses of the persons mentioned above;

(c) members of the families of those persons, provided either that they reside with them or are dependent on them for their maintenance, or that they are carried in the vehicle which caused the damage.

2. Damage caused by the vehicle during participation in authorised motor races or competitions, whether for speed, reliability or skill may be excluded from the normal insurance.

ARTICLE 5

Should it be stipulated in the policy that the assured shall himself make some contribution towards compensation for the damage, the insurer shall nevertheless remain liable to the injured party for payment of the contribution which the contract lays down as being due by the assured.

ARTICLE 6

1. The injured party has a direct claim against the insurer.

2. Should there be more than one injured party, and the total compensation due exceed the sum insured, the rightful claims of the injured parties against the insurer shall be reduced in proportion to that sum. Nevertheless, an insurer who, through ignorance of the existence of other claims, has in good faith paid an injured party more than that party's proper share, shall be accountable to the other injured parties only for the remainder of the sum insured.

ARTICLE 7

1. The assured must report to the insurer all accidents of which they have knowledge. The policy-holder must supply the insurer with any information or documents stipulated in the policy. Assured persons other than the policy-holder must supply any information or documents required by the insurer, at the latter's request.

2. The insurer may make the assured a party to an action brought against him by the injured party.

ARTICLE 8

1. Any action by the injured party against the insurer based on the former's direct claim against him shall be barred after two years have elapsed since the time of the accident.

2. A written request shall suspend the period of limitation in respect of the insurer until such time as he states in writing that he has broken off negotiations. The period of limitation shall not be suspended by subsequent requests.

1. The insurer may not raise against an injured party the rights which he possesses vis-a-vis the assured, by virtue of the contract or of the provisions of the law relating to it, to withhold or reduce its benefits.

2. The invalidity or termination of the insurance contract, its suspension or that of the guarantee thereunder may be raised by the insurer against the insured party only in respect of accidents occurring after 16 days have elapsed since the insurer gave notice of the said invalidity, termination or suspension. In the case of consecutive insurances this provision shall apply only to the last insurer.

3. However, the provisions of the preceeding paragraphs shall not be applicable insofar as the damage is effectively covered by another insurance.

4. The provisions of paragraphs 1 and 2 of the present Article shall in no wise prejudice the insurer's right to take action against the policy-holder or an assured person other thon the policy-holder.

ARTICLE 10

No departure by way of agreement between individuals may be made from those provisions of this law which are designed to protect injured parties, unless the right to do so follows from those provisions.

ANNEX II—RESERVATIONS TO THE CONVENTION

Each Contracting Party may state its intention:

1. to exempt from compulsory insurance motor vehicles owned by corporate persons under public or private law able to provide sufficient financial guarantee to be their own insurer;

2. to allow the deposit of a security in lieu of insurance by such persons as it shall determine, previded, however, that such security offers injured parties safeguards equivalent to those afforded by the insurance;

3. to exclude from compulsory insurance wiiiful damage caused by the assured;

4. to exempt from compulsory insurance the cases specified in the second sentence of paragraph 1 of Article 3 of the annexed provisions;

5. to exempt from compulsory insurance the driving of a vehicle without the consent of the owner or person in charge, or in contravention to their orders, provided that in such cases the injured party has a guarantee of compensation, at least in respect of damage to person;

6. to exempt from compulsory insurance damage for pain and suffering;

7. to exclude from benefit under the insurance, when the assured is a coroporate person or a commercial company not possessing legal personality, the legal representatives of the assured, and the spouses of such representatives, and, under the terms of paragraph I (c) of Article 4 of the annexed provisions, members of the families of such representatives;

8. to exclude from benefit under the insurance of a motor vehicle any person who is carried with his consent in that vehicle although he knows or should have known that the vehicle was taken from the rightful possessor by an unlawful act or is being used in the perpetration of a criminal offense;

9. to exempt from compulsory insurance damage to passengers in the vehicle that was the cause of such damage, if they were being carried free of charge or as a favour;

10. to exempt from compulsory insurance motor vehicles while being driven in private grounds to which certain persons have right of access and also motor vehicles while taking part elsewhere than on the public highway in motor races or competitions, whether for speed, reliability or skill;

11. to depart, solely as between its own nationals, from the terms of Article 5 of the annexed provisions in regard to property involving small sums;

12. to leave it to its courts to decide whether, in the case of damage caused in its territory, Article 6 of the annexed provisions shall apply, indication being given where necessary to the courts of the principles on which they should proceed;

13. to depart from the provisions of paragraph 2 of Article 6 of the annexed provisions with a view to providing an alternative method of apportioning the sum insured;

14. to depart from the provisions of paragraph 2 of Article 8 of the annexed provisions;

15. to depart from Article 9 of the annexed provisions where, in the cases mentioned in that Article, the injured party has a guarantee of compensation for damage to person and property; the amount of compensation to which the injured party will be entitled shall he the same in the case of personal injury as if there had been an insurance; in respect of damage to property the amount of compensation may be determined in some other manner.

16. to depart from paragraph 2 of Article 9 of the annexed provisions in respect of motor vehicles normally stationed outside its territory.

PROTOCOL OF SIGNATURE

When signing the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles the signatory Governments recognize that the term "motor vehicles" contained in the first paragraph of Article 1 of the provisions annexed to the said Convention shall be understood to include all mechanically-propelled vehicles which are intended to be driven on the ground other than vehicles running on rails, even if they are connected to electric conductors, and also cycles fitted with an auxiliary engine.

For the Government of the Republic of Austria:

LEOPOLD FIGL

For the Government of the Kingdom of Belgium:

P. WIGNY

For the Government of the Kingdom of Denmark:

For the Government of the French Republic:

M. COUVE DE MURVILLE

For the Government of the Federal Republic of Germany:

VON MERKATZ

For the Government of the Kingdom of Greece:

CAMBALOURIS

For the Government of the Icelandic Republic:

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For the Government of Ireland:

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For the Government of the Italian Republic:

PELLA

For the Government of the Grand Duchy of Luxembourg:

E. SCHAUS

For the Government of the Kingdom of the Netherlands:

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For the Government of the Kingdom of Norway:

HANS ENGEN

For the Government of the Kingdom of Sweden:

LEIF BELFRAGE

For the Government of the Turkish Republic:

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For the Government of the United Kingdom of Great Britain and Northern Ireland:

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Mr. DANIELSON. You may proceed as you wish. I think it will be more effective if you just argue your case and don't feel hemmed in by the content of that statement.

You have the option of proceeding as you wish, however.

## TESTIMONY OF BRUNO RISTAU, CHIEF, FOREIGN LITIGATION SECTION, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. RISTAU. Thank you very much, Mr. Chairman, and members of the committee.

It is a pleasure to appear before you again. I had the privilege of appearing last year, and 3 years ago, in connection with the foreign states sovereign immunities bill which has since passed. I also had the privilege of appearing before the distinguished chairman of the International Operations Subcommittee on the companion bill—the Diplomatic Relations Act—which now passed the House on July 27.

To that extent I would like to correct my written statement, which Mr. Fascell properly called the diplomatic responsibility bill.

Now, your bill—H.R. 7679—goes hand-in-hand with the Diplomatic Relations Act. The latter, the Diplomatic Relations Act, will impose an obligation on the diplomatic community to carry liability insurance at a level to be set by the executive branch.

Your bill, Mr. Chairman, would permit direct recovery from the insurance carrier in those instances where the assured diplomat himself will remain immune from suit because of the mandate of the so-called Vienna Convention on Diplomatic Relations.

Now, let me at the outset emphasize as strongly as I possibly can that the personal immunity of a diplomat from the enforcement jurisdiction of our courts does not relieve him of liability under our laws.

I have read—and I must say I am astonished and distressed—the gross misrepresentation made in the statement by the member of the insurance industry to the effect that because a diplomat enjoys personal immunity from suit, there is no liability.

That is wrong. That contention has been rejected by the courts for the last century and, unlike wine, it has not improved with age.

Diplomats are certainly liable for their torts and for their contracts. The impossibility of bringing suit against them personally in this country does not relieve them of liability. There most certainly is a legal obligation.

The acid test, Mr. Chairman, on that is simple: you can always sue a diplomat in his home state on a traffic accident caused in a foreign country to which he is assigned as a diplomat.

If it were true that there is no legal liability obviously you could not bring an enforcement action in his home country.

The reason——

Mr. DANIELSON. Let me interrupt and see if we can expand on that just very slightly.

The point I wish to make is this: Suppose a diplomat from West Germany—I have forgotten the correct legal designation——

Mr. RISTAU. Federal Republic of Germany.

Mr. DANIELSON. Thank you. Suppose some diplomat whose home is in Munich gets involved in an automobile accident in the Commonwealth of Virginia, and we cannot sue him here because of his diplomatic immunity on the suit. Could he be sued in the local courts in Munich?

Mr. RISTAU. The answer is absolutely yes, Mr. Chairman—he could be. As a practical matter, however——

Mr. DANIELSON. I understand the practical side. I am only asking, legally speaking, is he amenable to suit in Bavaria?

Mr. RISTAU. He is legally liable to suit in Bavaria, or Bonn, or wherever you can get personal jurisdiction over him under German law in the Federal Republic of Germany.

Mr. DANIELSON. When you said "state," you mean sovereign state, as opposed to the political subdivision—correct?

Mr. RISTAU. That is correct.

Mr. DANIELSON. I understand that. Thank you for expanding on that point.

I didn't know that before. I will add that to my store of interesting knowledge.

Will you proceed, sir?

Mr. Ristau, right on that point, Mr. Moorhead has a question.

Mr. MOORHEAD. As a matter of practicality, though, it is very difficult, when the diplomat is here in this country, and to sue him over there in his native state, especially where the witnesses are all here.

Some other kind of a solution than suing him in the state of residence is necessary.

Mr. RISTAU. You are absolutely right, Mr. Moorhead. As a matter of practicality, it is not a feasible solution. I was merely adverting to the principle, Mr. Moorhead, to crystalize for the subcommittee the legal relationship and the legal obligation.

In addition, Mr. Moorhead, please bear in mind that under the Vienna Convention on Diplomatic Relations, which the Diplomatic Relations Act now complements, there is a specific provision in article 41, if there ever was any doubt about it, that diplomats are obligated to obey the laws of the host state; it is also certain that obligations arising out of legal relationships which they enter into are binding.

To be distinguished from that, is the lack of enforcement jurisdiction in the receiving State.

Mr. MOORHEAD. That statement, that they are liable to the laws of the State where they are serving, however, is meaningless unless there is some penalty for the thing that they do, or the harm they cause to somebody else.

Mr. RISTAU. That is generally correct, Mr. Moorhead.

Mr. KINDNESS. Would the gentleman yield?

Isn't there a further question as to whether the laws of the Federal Republic of Germany or another nation would give full faith and credit to the laws of the State in the United States or the District of Columbia that would establish the bounds of liability?

Mr. RISTAU. Mr. Kindness, when you are referring to full faith and credit, I assume you are not talking in terms of the constitutional requirement of full faith and credit.

The legal issue here, in my judgment, is a fairly simple one. It is a question of conflict of laws—whose substantive law is being or will be applied to a resolution of this tort claim in the forum State.

Now, the general principle of conflict of laws is that the lex loci delictus governs—the law of the place where the delict occurs. So that whether there is tort liability—in our hypothetical accident which occurred in the District of Columbia, involving a German diplomat and a local citizen—if the German diplomat were sued in Germany, the German court would look to the laws of the District of Columbia to determine whether under the laws of the District of Columbia a tort obligation was incurred and would apply that law in Germany—a straight choice of law, if you wish, or conflict of laws problem.

There is no problem with that. Courts apply the substantive laws of foreign states under a variety of circumstances. We have a fully developed body of laws which determines which choice a court under given circumstances should make.

Mr. KINDNESS. But that would not necessarily apply in all other nations, would it?

Mr. RISTAU. Mr. Kindness, my practice in some 40 foreign jurisdictions over the past 20 years has taught me that there is an amazing similarity, if not identity, of the choice of law rules in the various jurisdictions around the globe.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. Ristau, would you continue? I promise I will not get off on another diversion.

Mr. RISTAU. Mr. Chairman, you may inquire anytime.

The point I would like to stress to the subcommittee is that the idea of a direct action statute is certainly not a novel one in this country. Various State jurisdictions have had direct action statutes on their books for decades now.

I believe the leading jurisdictions are the States of Louisiana, Wisconsin, and the Commonwealth of Puerto Rico. We have for the benefit of the committee reproduced those statutes in an appendix to my prepared statement. I have also given you references to other State statutes in this area, which contain a variety of permutations.

Direct action statutes, in addition, Mr. Chairman, as the distinguished Senator from Maryland has pointed out, are the rule in Western Europe, and I may add, also in a number of South American countries.

In fact, my office right now is handling two cases in which American diplomats are involved in Colombia and in Peru, and the insurance carriers of those American diplomats are parties to the action because; under the laws of those two countries you bring the insurance carrier directly into the action.

Mr. DANIELSON. Mr. Ristau, will you do this, please? I think it would be helpful if you will explain to the subcommittee the status as applies to American diplomats stationed in states which are members of the Council of Europe. Would you elaborate on that?

Mr. RISTAU. An American diplomat stationed in Bonn—since we picked the Federal Republic of Germany—is required to comply, to begin with, with the German mandatory insurance laws. He does not get a DPL license plate unless, at the time of his application to the appropriate authorities in Bonn, he also shows evidence of insurance at the level mandated by German legislation.

Number 2, if he gets involved in a traffic accident, if he authors a traffic accident, the German victim—assuming it is a German victim, and assuming further that the matter cannot be settled extrajudicially—proceeds in court against the insurance carrier alone. The diplomat is not named as a party. Therefore, the problem that has been so vexing to the Congress, and I assure you to the executive branch, simply does not exist in these civil law countries because you do not touch the foreign diplomat at all; you do require him—and there is no inhibition as a matter of international law from requiring foreign diplomats to comply with reasonable regulatory legislation of the domestic sovereign—you require him to carry insurance.

In order to assure that an effective remedy through ordinary court processes is available, you permit—and the Western European Convention requires that the signatory states enact direct action statutes—you permit a direct action against the insurance carriers, as Louisiana, as Puerto Rico, as Wisconsin have done for many years.

It will not surprise this distinguished subcommittee that the insurance industry has traditionally opposed such legislation.

Mr. DANIELSON. Let me make two or three statements. Will you tell me whether I am right or wrong, please?

Insofar as the Council of Europe States are concerned, is it not presently the uniform policy and law in those states that an American diplomat stationed in those states must comply with the same types of requirements you have just mentioned?

Mr. RISTAU. Right.

Mr. DANIELSON. Second, if the American diplomat posted to those states, any of them, becomes involved in a tort in which he would ordinarily be subject to suit as a private citizen, the action can be brought against his insurance carrier?

Mr. RISTAU. Right.

Mr. DANIELSON. Without naming the diplomat himself?

Mr. RISTAU. Right again.

Mr. DANIELSON. That covers practically all of what we know as Western Europe; Scandinavian States, British Isles, Germany, Holland, and Belgium, Italy, France?

Mr. RISTAU. That is correct. Except, to the best of my knowledge, the United Kingdom has not joined that convention.

Mr. DANIELSON. The states aside from the United Kingdom?

Mr. RISTAU. Right.

Mr. DANIELSON. So, if this bill became law, depending first upon the effectiveness of the bill sponsored by Mr. Fascell, we would be providing in the United States comparable type of required insurance coverage for foreign diplomats as they require of our diplomats in Western Europe?

Mr. RISTAU. Absolutely right.

Mr. DANIELSON. This type of statute has been held to be constitutional so far as Louisiana, Wisconsin, and Puerto Rico are concerned?

Mr. RISTAU. Yes, sir.

Mr. DANIELSON. The courts of Florida have mandated it on theory of a third-party beneficiary in contract, I believe?

Mr. RISTAU. That is correct.

Mr. DANIELSON. In Florida?

Mr. RISTAU. In the State of Florida, without the benefit of legislation, the Supreme Court of Florida has held that liability insurance in this day and age is, in effect, taken out for the benefit of the future victim and he is a third-party beneficiary of the insurance contract and can sue the insurance carrier directly.

Mr. DANIELSON. Right.

I will then yield. I think we are ready for questions. I will yield to the distinguished ranking majority member, Mr. Moorhead, for questions.

Mr. MOORHEAD. I want to thank you for your very interesting testimony. There are a few points that are still unclear in my mind about the law, however.

The opposition of the insurance companies intrigues me. If they can charge for their insurance policies a rate comparable to the exposure, could you explain to me what are the reasons for their opposition? It opens a new field of business for them. If they can charge a commission or a sum comparable to the risk, what is the problem?

Mr. RISTAU. I cannot see the problem. I have great trust and confidence in the genius of American free enterprise and I am satisfied that the insurance industry is capable of setting a level of insurance premiums to afford adequate and full redress to victims of accidents caused by their assured, of their insurance. I do not see the problem for whatever it may be worth.

Mr. MOORHEAD. Obviously the risk is heavier with these people because they might be conditioned to violating the law without being too concerned with it.

Mr. RISTAU. Forgive me, Mr. Moorhead, most respectfully I cannot join in that statement.

Mr. MOORHEAD. The unpaid parking tickets give some evidence of a lack of overall concern.

Mr. RISTAU. With some diplomatic missions, yes. I believe that the record is quite clear that by and large—not just by and large, uniformly—the diplomatic community, and certainly the highranking diplomats whose problem is supposed to be taken care of by this particular legislation, are responsible individuals, are not reckless, are mindful of our laws. I believe our good friends in the insurance industry have some statistics on it. I suspect the diplomats' driving record is a very good one.

For whatever it may be worth, Mr. Moorhead, may I point out to you that in 1975, the last year for which statistics are available—and I am referring to the Statistical Abstract of the United States—the insurance industry took in in premiums earned $20.2 billion, and paid out in losses $16.8 billion.

Mr. MOORHEAD. They made some money.

Now if we had the same system we had in Western Germany, where you gave them their diplomatic license plate only if they have their insurance——

Mr. RISTAU. That is the system that is going to be introduced if Chairman Fascell's bill becomes the law.

Mr. MOORHEAD. All right. Now, what if they drive without the diplomatic plate, do they not still have the same immunity? Is the plate the thing that gives them the immunity?

Mr. RISTAU. No; it certainly is not. It is their status as an accredited diplomat in this country which confers immunity.

Mr. MOORHEAD. So the plate is only the evidence?

Mr. RISTAU. Correct, of one aspect of their immunity.

Mr. MOORHEAD. It merely means nothing as far as the consequences of the law.

Mr. RISTAU. No; that is right, that plate is unimportant; it signifies that the owner is a diplomat.

Mr. MOORHEAD. In the debate on the floor on the insurance bill, (H.R. 7819) the question was asked: what if they drive and get into an accident and do not have the insurance? The answer that was given, and the only answer that was given for the Members on the floor, was that they could be declared personal non grata and put out of the country.

Mr. RISTAU. Correct.

I must start out with the premise, Mr. Moorhead, that foreign diplomats are responsible, that they are aware of their obligation under the Vienna Convention to abide by the laws of the host state; and if one of the laws of the host state requires that they carry mandatory insurance, that they will abide by those laws. In case they violate our laws there is the remedy—not very drastic to be sure—a diplomatic protest, in the event of repeated flagrant violations they may be asked to leave the country.

Mr. MOORHEAD. I am concerned about the attitude reflected by these thousands and thousands of parking tickets and, if the attitude is the same in the other areas of legal responsibility, I would be concerned——

Mr. RISTAU. May I respectfully give to this distinguished subcommittee the same answer I gave to Chairman Fascell's subcommittee when the question of parking tickets was raised?

That problem will in part remain with us. Although it is a vexing problem, it is not a very serious problem in our judgment. It can be alleviated in large measure through more effective enforcement of traffic laws by the law enforcement agencies.

There is, for instance, nothing in the Vienna Convention on Diplomatic Relations that prevents the local police from towing away a diplomat's car parked next to a fire hydrant, if a diplomat insists on parking there day after day. I submit to you if the car is towed away once, or twice, or three times, there will be no diplomatic car parked next to the fire hydrant a fourth time.

Mr. MOORHEAD. Who pays the towing costs?

Mr. RISTAU. That, the local sovereign has to absorb. You cannot charge the diplomat the towing charge. But the mere circumstance that you cannot collect the towing charge does not give a diplomat a license to flout the traffic laws of this country.

Mr. HARRIS. Will my collegue yield?

I would be terribly interested knowing you can tow the car.

Mr. RISTAU. I do not know, Mr. Harris, that the Hague Convention says anything on that. I suppose you ought not to overdo it and tow it from Washington to Charlottesville, but I am sure you can tow it to the police impoundment lot.

Mr. MOORHEAD. I guess the key problem is, we are not anxious to punish them. But we also want to make sure there are none of our citizens that are going to be seriously injured for life, in the instance we heard about earlier, for example, and not have some means of redress.

I guess the big question I want to ask you is, does the combination of these bills basically take care of the problem or is there something else that is necessary?

Mr. RISTAU. To the best of our knowledge, Mr. Moorhead, it will not take care of 100 percent, but it will take care of the vast majority of the problems that arise as a result of traffic accidents authored by diplomatic drivers. This is the problem that Congress is addressing; this is the problem that you are addressing in this bill; this is the problem that Chairman Fascell addressed in the Diplomatic Relations Act.

It will, at long last, bring this country into the latter part of the 20th century, where it belongs. In fact, if I may add a personal note, I spoke to a counselor of an embassy just this past weekend, and he simply could not understand that we have these problems in this country. Other countries have solved the problem through mandatory insurance and direct action statutes decades ago.

It became clear to me that the problem which we have and which, as I said at the outset, is vexing the Congress and the executive in an ever-increasing number, needs to be solved; and of course it is a tragic incident like the incident of Dr. Halla Brown that now has so prominently brought it to the forefront, especially in this city and in the surrounding areas. It is a problem of our own making which the Congress should address, which it is addressing and we are delighted at that; Congress is fully authorized to address the problem, because—

and this may be in part in answer to a question asked by Mr. Kindness earlier—the diplomatic immunity which these individuals enjoy is based on Federal, on treaty law, and clearly the Congress is authorized under the Constitution to address the problems that arise as a result of a Federal privilege, to alleviate the difficulties that arise, and to provide for effective compensation and redress to our citizens who right now are suffering from the overaged laws which we still have in our country.

Mr. MOORHEAD. Do we have any other examples of direct action in Federal law?

Mr. RISTAU. Mr. Moorhead, not in this area, of course. But the notion of a direct action as a matter of Federal law is again not a new one. What comes to my mind immediately is the Federal Medical Care Recovery Act, which, you will recall, was enacted by Congress in 1964 and permits the United States to recover medical expenses under circumstances where a third party injures, say, a serviceman, who is then put into a military hospital where he does not pay for the hospitalization.

Congress enacted a law giving a direct right of action to the Government to recover for these hospital expenses. The statute is in 41 U.S.C. 2651. I believe it is analogous to what we are talking about.

Mr. MOORHEAD. I have just one other question. I know my time is up.

In some of our States we have laws precluding the introduction of evidence of a person having insurance. Is there any inconsistency at all with the requirement that one particular group of people have insurance and the requirement that States have, individual States where the action might be brought, that you could not introduce such evidence?

Mr. RISTAU. No; in my judgment it is not inconsistent because this particular group of people is a very unique group of people. They enjoy immunity from the enforcement jurisdiction of the United States, something quite extraordinary. They are not above the law, but they are not subject to the enforcement jurisdiction. Therefore, because of the uniqueness of that group, it is proper for the Congress to enact a special rule for that unique group.

Mr. MOORHEAD. I just wanted to say in conclusion that I understand that foreign diplomats who come to our country are outstanding individuals for the most part. I did not wish to cast any aspersions on anyone.

Mr. RISTAU. I am sure.

Mr. MOORHEAD. But, where you do have examples, and we have had some here in the Washington area, of diplomatic personnel that have been less than conscious of some of our laws, it does create a problem. We should fill the loophole.

Mr. RISTAU. We must.

Mr. DANIELSON. The gentleman from Kentucky.

Mr. MAZZOLI. Thank you very much and welcome to the committee.

I have been reading from the testimony which will be delivered later this morning from the industry. Let me read some of the words and perhaps you can comment on them, sir.

It says in the testimony that this bill is designed to hit the other 5 percent which our colleague Mr. Fascell said would not be hit by the passage of his bill. Then it says this entire bill is premised on the

assumption that such an individual, a diplomat, will be insured, but the bill's terms make this essential assumption unwarranted.

Then they go on and quote language from the standard, everyday, ordinary insurance policy, which says that the only time the insured, I should say the insurer has to pay is when the insured becomes legally obligated to pay.

Now you earlier this morning mentioned the distinction and I think it might be well for us to give more attention to the distinction between legal immunity as given to a diplomat and legal obligation. Perhaps you could answer this question raised by the insurance industry to which you have earlier given some attention.

Mr. RISTAU. Yes; I will try to, Mr. Mazzoli.

To begin with, I think the statement uses rather loose language. You must distinguish insurance contracts, accident liability insurance contracts, on the one hand, from pure indemnification contracts. They are talking in the statement about pure indemnification, the essential element of which is that the insurer does not become liable until the liability of the assured has first been established. That is not what Mr. Fascell's bill talks about.

We are not requiring under the Diplomatic Relations Act indemnity insurance. We require accident insurance, which is separate and distinct from indemnity. Accident insurance is primarily, under the modern theory, for the benefit of those who may in the future be injured by the insured. So I must reject the basic premise of that statement. It is good law as far as indemnification is concerned. It is poor law as far as accident liability insurance is concerned. That is what the Diplomatic Relations Act will require.

Mr. MAZZOLI. A further statement, Doctor, from this statement which will be delivered later this morning:

> Under these circumstances a direction action against an immune diplomat's insurer would be of no avail to a claimant since the insurer's contractual obligation will be entirely contingent on a legal obligation from which the insured is immune.

I believe you earlier referred to this. You could direct your attention to that.

Mr. RISTAU. I cannot stress this. I cannot state it emphatically enough to this committee that that representation is false, Mr. Mazzoli. There is no immunity from legal liability. There is immunity from enforcement jurisdiction. I mentioned the example of an action being capable of being brought in the diplomat's sending state, merely to crystallize and to bring to the forefront the point that the diplomat most certainly is not exempted from legal liability, and therefore the basic premise of that statement, being false, everything that follows is simply f-a-l-s-e.

Mr. MAZZOLI. I thank you, Doctor. That helps me a great deal.

Mr. RISTAU. Thank you, sir.

Mr. MAZZOLI. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you.

Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

If the foreign diplomat is not subject to the jurisdiction of courts in the United States, then there is no right of action by an injured party here in the United States, is that correct?

Mr. RISTAU. No, sir. There is a right of action. It cannot be enforced. There very much is a right of action.

Perhaps it may help you, Mr. Kindness: In the criminal area a diplomat who commits an offense, he is not above the law, he very much commits the offense if there is a statute which proscribes that type of conduct, but he cannot be put on trial here. However, recognition is given to the fact that he does commit an offense by the circumstance that he can be expelled. If he were above the law, if he were not committing an offense, manifestly you could not even expel him.

So the two are not coextensive, Mr. Kindness—nor does one follow from the other. The fact that you do not have enforcement——

Mr. KINDNESS. Does it then follow that we are barking up the wrong tree if we are creating a substantive right of action? All we are dealing with here is the problem of diplomatic immunity and properly conditioning it so that it controls the situation that presently exists. If we are going to respond to that problem by creating a new substantive right, then we are barking up the wrong tree, are we not?

Mr. RISTAU. The right is only to proceed against the insurance process for which the diplomat is required to pay. It is no different, really—and I do not wish to be repetitious—but it is no different than the various direct action statutes enacted by the States You are given an additional right here to proceed against the insurance carrier. In turn, the tortfeasor is required to take out insurance and to pay a proper premium for it.

No one is seeking in any way, I assure you, through this legislation to have the insurance industry compensate our citizens for diplomatic traffic accidents out of their own pocket. They are most certainly entitled to find an appropriate rate of premiums to make them whole, plus a profit, for whatever they have to pay out. These are basic insurance principles.

Mr. KINDNESS. I do not doubt that the means can be found by which to determine what a proper premium should be, even though it is a relatively small grouping of insurers, but the mechanics concern me because I am one of those peculiar people who still believes that the people of the States created the Federal Government and the States have a measure of responsibility in this matter.

If, for example, Maryland and Virginia required liability insurance coverage before automobiles could be operated on their highways and had an uninsured motorists type of fund, there would have been less heartbreak in the cases that have come to public light. So the States which are involved have some degree of responsibility here, too, I think.

But does the inaction of those States really justify our creating a new cause of action against a new party, a different party, not the tortfeasor?

Mr. RISTAU. It does, Mr. Kindness, because that privilege that this small group enjoys, the immunity privilege, is a creature of Federal law. I believe it is the responsibility of the Federal Government to find means to alleviate the hardship that is created when a foreign diplomat causes damages to one of our citizens.

I believe it follows very much from this Federal privilege and from the benefit that this group enjoys that special measures be taken for

the protection of our citizenry. That is what we are talking about: to find an effective way, and one which will not harm our diplomatic relations to provide redress for local citizens who, unfortunately, are going to get injured in accidents authored by foreign diplomats. So it is the responsibility of the Federal legislature and the Federal Government to step into the breach since the States have not created an effective remedy the Federal Government should.

Mr. KINDNESS. It is only a question of how, that we are trying to get at, I think. Certainly it is the Federal responsibility to remove an impediment that stands in the way of the enforcement of rights of individuals. States perhaps should take some action, too, but, instead of creating a new substantive right, a right of action here, I am wondering why we could not simply, by statute, condition the diplomatic immunity upon the providing of insurance coverage, as Mr. Fascell's bill requires, and the condition that the foreign diplomat provide a waiver of that immunity in certain cases.

It is the immunity that stands in the way of the enforcement of the cause of action.

Mr. RISTAU. I am glad you raised that question, Mr. Kindness. Two answers to those questions.

No. 1, as a matter of international and treaty law, I do not believe we have the right, or possibly even the power, to condition a diplomat's immunity on anything. As long as we have diplomatic relations with a foreign country and we accept their diplomatic missions here, they have a right, as a matter of international law, to this kind of immunity, which we cannot condition.

No. 2, with respect to the waiver, bear in mind that diplomatic immunity is not a personal privilege of the diplomat but rather, it is the privilege of the foreign state that sends him here, of which the diplomat partakes. Diplomatic immunity cannot be waived by the foreign diplomat himself. It can only be waived by his sending state. Therefore, trying to condition a diplomat's acceptance here on a waiver of diplomatic immunity by the diplomat individually beforehand, Mr. Kindness, just would not work.

Mr. KINDNESS. So we have to find some other way?

Mr. RISTAU. We have to find a way around the fact, which is a fact of life, that these foreign diplomats will—as long as we maintain diplomatic relations with their sending states—always remain immune from the enforcement jurisdiction of our courts.

As a member of the family of nations, as a signatory Nation to the Vienna Convention on Diplomatic Relations, this Government had undertaken this obligation. We would be in breach of a solemn international obligation if we were unilaterally to change this well-established rule.

Mr. KINDNESS. Would it be your view that the—no, I think that is a sufficient answer. Thank you.

Mr. DANIELSON. Thank you, Mr. Kindness.

Mr. Harris.

Mr. HARRIS. Thank you.

I would like to compliment you for your testimony. I do not know whether you have had experience being a law professor or not.

Mr. RISTAU. I have, sir.

Mr. HARRIS. I suspected that would be the case.

Mr. RISTAU. Forgive me, I did not mean to lecture to the committee.

Mr. HARRIS. I did not mean to criticize you.

Do your diplomats have insurance in foreign countries?

Mr. RISTAU. Quite uniformly, Mr. Harris.

Mr. HARRIS. Who writes that insurance?

Mr. RISTAU. Local insurance companies.

Mr. HARRIS. Is that insurance of the type that you have explained to this committee that gives direct access to the insurance company?

Mr. RISTAU. In a great many cases, certainly in Western Europe. and in quite a number of countries of South America and Central America.

Mr. HARRIS. Good.

For example, in Western Europe, West Germany, there are companies that write this type of insurance?

Mr. RISTAU. Yes, sir.

Mr. HARRIS. The type that we are describing here?

Mr. RISTAU. Yes, sir.

Mr. HARRIS. This seems strange to me; I thought if we had anything that we have done well in this country it is a well-developed insurance industry here.

Do I understand from previous testimony that they will not have insurance written in this manner?

Mr. RISTAU. I find that very difficult to believe. On occasion lawyers can learn a lot from comparative law research, and our friends in the insurance industry might also learn from the business practices of their brethren abroad.

Mr. HARRIS. If the American industry did not want to write this type of insurance, I suppose Lloyds of London would.

Mr. RISTAU. Well, the answer to this, manifestly, is yes; but on the other hand, I am not convinced that our highly developed insurance industry would find such insurmountable difficulties.

Mr. HARRIS. You think they would in fact write such policies and charge the appropriate premium?

Mr. RISTAU. Of course.

Mr. HARRIS. Is there a requirement that diplomats use diplomatic plates?

Mr. RISTAU. No.

Mr. HARRIS. Let me rephrase the question. If a car is on the street in Washington, D.C., without any plates on it, this is subject to being towed away?

Mr. RISTAU. Absolutely.

Mr. HARRIS. So if a diplomat wants to take a car on a street, he either has to have regular plates or diplomatic plates?

Mr. RISTAU. Correct. He is certainly required to have plates on the vehicle. I take it the majority, if not all, of the diplomats do avail themselves of the diplomatic license plates. They get them free.

Mr. HARRIS. As I understand the Fascell law, in order to get diplomatic plates they would have to have insurance, they could not get diplomatic plates without that.

Mr. RISTAU. That is correct. Under the Fascell bill, before they get the authorization from the State Department, which they have to get

beforehand to go the motor vehicle bureau and apply for the "DPL" plates, they would have to satisfy the State Department that they have met the mandatory insurance requirement that the Fascell bill will impose.

Mr. HARRIS. I think that closes up one of the potential loopholes that has been referred to here before. In addition, I wonder if there should be a companion law that requires any diplomat that wants to get regular license plates to waive his immunity.

Mr. DANIELSON. Would the gentleman yield?

Mr. HARRIS. Yes.

Mr. DANIELSON. Mr. Ristau has answered that at great length, and in order to preserve time——

Mr. HARRIS. I am not sure he has.

Mr. DANIELSON. Yes; he has. He has stated that the individual diplomat cannot waive his immunity, because the immunity belongs to the sovereign state which he represents, and he is simply cloaked with it here. The waiver would have to come from the sovereign state, which will never waive immunity.

Mr. HARRIS. I am quite sure they would never waive it. I am talking about provisions which would not exempt him from the insurance requirement, we would not allow a diplomat plates, unless they have this type of insurance.

It would still be possible for an individual state to waive immunity and allow their diplomats to get regular plates.

Mr. RISTAU. I suppose theoretically, Mr. Harris, he could abstain from the privilege which he has to get diplomatic license plates and obtain regular plates. However, in my judgment, that would not exempt him from the insurance requirement, we will not allow a diplomat to flout our laws through such a simple device. That would not exempt him from complying with the Fascell bill; as long as he is a diplomat and enjoys personal immunity from suit he will be required to comply with the Federal minimum insurance requirement that will be set by the State Department under that bill. It does not go hand-in-hand with the diplomatic license plate; it goes hand-in-hand with his status as a foreign diplomat.

Mr. HARRIS. That is a good answer.

The problem I was looking at was, for example, is a diplomat living with a family that had regular license plates that was driving that car and would claim diplomatic immunity but would not have insurance. I was trying to see if there is a way to close that loophole.

Mr. RISTAU. I do not know how. That is why I represented to you—and I find it difficult to put a numerical standard on it—I would hope we can reach 98 percent of the problems that arise now; 100 percent is not given to us humans——

Mr. HARRIS. Not many of us, not many of us.

Mr. MAZZOLI. Maybe in Virginia they could get 100 percent.

Mr. HARRIS. May I inquire?

If in fact the industry was opposed to the requirement for insurance, we could in fact set up some kind of a government fund to cover this liability, could we not?

Mr. RISTAU. This is one way of covering this, that is quite right, Mr. Harris.

As I see it, the subcommittee has three possibilities: (*a*) Do nothing about it, leave it the way it is right now, which is totally unacceptable; (*b*) go along with the program suggested in this legislation; or (*c*) have the Government enter the insurance field, which I take it is totally unacceptable both to the Congress and also to this administration. We do not want any additional bureaucracy if there is established machinery to take care of that problem.

Finally, there is even a fourth possibility which was suggested at one time, and there was even a bill introduced to that effect earlier in this session, namely, to have the Federal Government simply assume responsibility for all diplomatic traffic accidents. That, I respectfully submit to you, is also totally unacceptable.

I believe those who drive ought to bear the risks, not the public purse.

Mr. HARRIS. You think private industry is better than having the Government do it?

Mr. RISTAU. I am a great believer in private industry and private enterprise in this country. I am satisfied that the private sector can take care of the problem.

Mr. HARRIS. I get from your testimony and from the questioning that you find it fairly amazing that this country has not acted in this area before, since so many other countries have.

Mr. RISTAU. I do, sir.

Mr. HARRIS. Why haven't we?

Mr. RISTAU. Inertia. It is a tragic incident like that of Dr. Halla Brown that has finally brought to the forefront how far behind we are, how far behind other countries we are in providing an effective remedy for our citizens.

Mr. HARRIS. Has Justice and the State Department been pushing for such legislation?

Mr. RISTAU. Yes, sir.

Mr. HARRIS. They just have not done it?

Mr. RISTAU. Yes, sir, it took the tragedy of a Dr. Halla Brown to bring it to the forefront.

Mr. HARRIS. Thank you.

Mr. DANIELSON. Thank you, Mr. Harris.

Thank you, Dr. Ristau. Your testimony has been very helpful to us. Your statement is in the record. You have responded generously to our questions and we are going to move on now. If we feel the need to contact you, we will get in touch with you.

Mr. RISTAU. Any time, sir.

Mr. DANIELSON. I have never been afraid to contact Dr. Ristau.

Now we have Mr. Hampton Davis, Assistant Chief of Protocol for Diplomatic and Consular Liaison, of the Department of State, accompanied by Ms. Kay Folger.

Will you please come forward? May we have Ms. Folger here too? The State Department is never fully represented until she is here.

Thank you.

Mr. Davis, you have supplied us with a statement, I believe.

## TESTIMONY OF HAMPTON DAVIS, ASSISTANT CHIEF OF PROTOCOL FOR DIPLOMATIC AND CONSULAR LIAISON, ACCOMPANIED BY KAY FOLGER, LEGISLATIVE MANAGEMENT OFFICER, OFFICE OF CONGRESSIONAL RELATIONS

Mr. DAVIS. Yes. The statement is from my colleague in the Legal Adviser's Office, Mr. Horace F. Shamwell, Jr.

Mr. DANIELSON. It is before this subcommittee?

Mr. DAVIS. Yes, sir.

Mr. DANIELSON. Without objection, it will be received in the record.

[The prepared statement of Mr. Shamwell follows:]

STATEMENT OF HORACE F. SHAMWELL, JR., ACTING ASSISTANT LEGAL ADVISER FOR MANAGEMENT, DEPARTMENT OF STATE

I am Horace F. Shamwell, Jr., Acting Assistant Legal Adviser for Management, Department of State. In this capacity, I serve as principal legal adviser on questions relating to diplomatic and related privileges and immunities. I have been designated by the Department of State to present its views today on H.R. 7679, a bill "to amend title 28, United States Code, to provide for actions against insurers on claims against persons entitled to diplomatic immunity."

The Department of State fully supports the aims of the subject bill. For a long time, the Department has been on record advising diplomatic missions of its expectation that they and their personnel (including family members who derive immunity as a result of their familial status) should secure adequate liability insurance for both official and personal vehicles against third-party risks. (A copy of the latest circular note to that effect is attached.) The Department has also provided enthusiastic support for remedial legislation to change domestic law on immunities for foreign diplomatic personnel and their families, which legislation seems well on the way to passage in the form of H.R. 7819, which recently passed the House of Representatives by unanimous voice vote. This measure would establish machinery within the Executive Branch for requiring all diplomatic missions and their personnel (and family members) to acquire liability insurance as necessary to guard against risks incurred as a result of the operation of motor vehicles, vessels, and aircraft.

The State Department has traditionally required its Foreign Service personnel abroad (including their family members) to acquire adequate insurance coverage for privately-operated vehicles, in keeping with local legal requirements. To the Department's knowledge, there is no post abroad at which this requirement is not adhered to strictly. In all European countries, for example, evidence of insurance coverage is required, in the form of possession of a "green card", before a car can cross the border to enter the country. These countries have long possessed the necessary capability for enforcing their individual insurance requirements. In addition, the head of each United States post abroad is assigned personal responsibility for ensuring that all persons under his or her jurisdiction take the necessary measures to secure adequate insurance coverage.

Since the United States has thus far not imposed a national liability insurance requirement applicable to diplomats and non-diplomats alike, the State Department has been in a difficult position to take constructive steps to require specific action on the part of diplomats vis-a-vis automobile insurance. It is hoped that passage of measures such as H.R. 7679 and H.R. 7819 will dispose of that handicap.

According to most recent tabulations, approximately 19,000 persons, deriving immunity directly or indirectly through the Vienna Convention on Diplomatic Relations, would be required to secure liability insurance. Although precise figures are unavailable, it is believed that the large majority of these persons are already covered by insurance, notwithstanding the absence of compulsory standards in the District of Columbia, Virginia, and other jurisdictions where diplomatic personnel and their families tend to reside in large numbers.

While the State Department fully endorses the aims of H.R. 7679, it has serious concern over the ability of the private insurance industry to accommodate the needs of the diplomatic community under the new strictures. Although the con-

cept of direct action against insurers is not a novel one, the factor of diplomatic immunity is an element heretofore not incorporated in such a scheme. Nevertheless, the State Department has traditionally taken the position that insurers should not have the opportunity to take advantage of the privileged position of their insured, whose immunity is not accorded for the purpose of protecting them against the ramifications of their private actions, and thus supports reasonable measures to remedy a situation which has proved to be unusually vexing in the past.

On the other legal ramifications of H.R. 7679, the State Department readily defers to the views of the Department of Justice, the statement of which it has already fully endorsed.

The Secretary of State presents his compliments to Their Excellencies, Messienrs and Mesdames the Chiefs of Mission, and has the honor to bring to their attention the Department's views on automobile insurance, and on parking and moving traffic violations, as they pertain to the operation of automobiles by personnel of foreign diplomatic missions in Washington.

First, it is the Department's position that all persons entitled to immunity who operate automobiles should be adequately covered by liability insurance. The Department strongly urges that any persons not presently covered obtain such insurance at the earliest possible time. Diplomatic personnel can appreciate that, in the event of an accident, an aggrieved private citizen is essentially without legal recourse and may sustain serious losses if the diplomatic party is uninsured.

Second, the Department is concerned over the continuing problem of parking violations committed by members of the Diplomatic Corps and their staffs. The Department reiterates its position that members of diplomatic missions should operate their automobiles in accordance with local traffic laws and regulations. In this connection, United States representatives stationed abroad are expected by the Department to pay charges resulting from parking violations. It is the Department's position that foreign official representatives posted to the United States should do the same, regardless of their immunity from arrest or detention.

Third, the Department is particularly concerned about serious moving traffic violations by members of the diplomatic community, since these incidents may result in injury or death as well as property damage. Moreover, they tend to create unwelcome tension between diplomats and State and local law enforcement authorities.

The Department takes this opportunity to remind the diplomatic community that persons enjoying diplomatic privileges and immunities have a duty under international law, as codified in Article 41 of the Vienna Convention on Diplomatic Relations, to respect the laws and regulations of the receiving State. At the same time the Department wishes to express its appreciation to the majority of persons attached to diplomatic missions who conscientiously abide by this requirement.

In closing, the Department requests that each embassy take appropriate measures to prevent the abuse of privileges by any members of its mission. Such measures are vital to the Department in its effort to uphold community understanding and acceptance of these privileges and to improve relations between the citizenry and law enforcement authorities and the diplomatic community.

Any questions concerning these matters should be directed to the Office of Special Protocol Services, 632-3170.

Mr. DANIELSON. Will you tell us, first of all, whether the State Department favors this bill or does not favor this bill?

Mr. DAVIS. Yes, Mr. Chairman, the State Department does favor the bill in its objectives. I am not satisfied that we are not going to have problems in implementing the bill because of the opposition that is obviously registered by the industry.

Mr. DANIELSON. If I were you, I would quit worrying about little details like that. If you will direct your attention to the legalistics of the legislation pending before the subcommittee—I am worried because we have 21 minutes remaining. Would you proceed?

Mr. DAVIS. All right. I wanted to make some comment about the convention which has been adopted in Western Europe. I have not had an opportunity to review that before this morning.

Mr. DANIELSON. I have read most of it, but go ahead.

Mr. DAVIS. I do believe it is pertinent to point out that that convention was adopted in order to require liability insurance of all drivers and it was not just aimed at diplomats. I do think there is some problem, for instance article 7, paragraph 2, says that the insurer may make the assured a party to an action brought against him by the injured party.

I do not know, because we have not had an opportunity to conduct an investigation or research into this, as to how actions where the diplomat is the tortfeasor are handled under this convention.

Mr. DANIELSON. Dr. Ristau has explained that pretty generously.

Mr. DAVIS. I am not sure that I understood how they are handled unless there would be a waiver of immunity by the sending state.

Mr. DANIELSON. Why do not you and Dr. Ristau get together following this hearing? I will bet you a dollar he can explain it to you.

Mr. DAVIS. All right, sir. We are certainly in favor of the bill in terms of requiring insurance since it is not required generally in the State of Virginia and in the District of Columbia. It is required in the State of Maryland. But in the absence of legislation requiring liability insurance we do feel that it is necessary.

Mr. DANIELSON. The Department of State does favor the bill, then?

Mr. DAVIS. Yes, sir.

Mr. DANIELSON. Thank you very much.

Mr. Moorhead.

Mr. MOORHEAD. Of the 19,000 people who would be subject to this legislation according to your testimony, about how many of them carry insurance now?

Mr. DAVIS. We have no figures on that, sir. It is just our impression based on the responses that we have received and circumstantial evidence that the majority of them do, but we have no precise statistics.

Mr. MOORHEAD. What would be the purpose of their carrying insurance other than the fact that they could be liable in their own country to a suit if there was no way you could get at them here?

Mr. DAVIS. Well, for one thing, the diplomats are accustomed to carrying insurance in other countries. I think they recognize, their embassies recognize it is a moral responsibility in the absence of an insurance requirement and we have, from the State Department, strongly urged it in the absence of mandatory insurance requirements.

Mr. MOORHEAD. All right. Assume at the present time that a third or half of the foreign diplomats in this country voluntarily carry insurance, which they were doing because they felt a moral requirement.

I take it the insurance companies are not paying off, they cannot be hit directly on that coverage now, and yet the diplomat cannot be sued. How do you ever get at him? What payoff is there on that insurance?

Mr. DAVIS. Well, Mr. Moorhead, all I can say is that from our experience there are settlements made by insurance companies in many of these cases. We do not have statistics that would show the exact proportion of those that are settled.

Mr. MOORHEAD. The insured waives his immunity?

Mr. DAVIS. No, sir. The immunity is not waived, but somehow or other the insurance company arrives at a settlement. Perhaps it is an open and shut case in which there is no possibility of contributory neg-

ligence. Whatever the explanation, and I certainly am not able to give it, settlements are made without waiver of immunity.

We have had a couple of instances within the past year in which we have requested of the foreign government a waiver of the immunity in which it has been granted, but by and large perhaps the insurance companies can elaborate or explain this better than I can. I just know that sometimes there are impasses reached and a satisfactory settlement is not reached, although we continue to try to bring the parties together and promote a settlement.

Mr. MOORHEAD. The fact that they would be liable in their own country perhaps gives the impetus to the insurance company here.

Mr. DAVIS. Possibly so. I mean I do not know why diplomats would be paying premiums, for instance, if there was no prospect of a settlement by the insurance company.

Mr. MOORHEAD. That is all.

Mr. DANIELSON. Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman.

Sir, do you know whether foreign diplomats, accredited diplomats, have to have American drivers' licenses?

Mr. DAVIS. Well, it is the same question whether they have to have diplomatic license plates. It is a requirement of law, and the Vienna Convention does impose a duty on diplomats and persons with immunity to obey the laws and regulations of the receiving state. So we take it as a matter of course that we should urge them to and, by and large, as far as we know they do get them.

Mr. MAZZOLI. You don't have any actual figures but it is the requirement under the Vienna agreement that an accredited diplomat stationed in the United States has to get a driver's license of the locality?

Mr. DAVIS. No, sir, the Convention is not that specific. It just imposes a general duty on all persons with immunity to obey the laws and regulations of the receiving state.

Mr. MAZZOLI. You were here in the room when my colleague from Virginia brought up the point that there could be, in a sense, a kind of loophole here, if the accredited foreign officers chose not to use a DPL plate but instead were to get a regular District of Columbia or Maryland or Virginia plate or drive a car which is normally and regularly registered.

I wonder if you have any suggestions as to how that kind of a loophole could be closed. Whether you perceive it to be a loophole of enough consequence to be bothersome.

Mr. DAVIS. It is difficult for me to predict on that, Mr. Mazzoli. I would say that there is a strong incentive for a diplomat to have DPL tags on his cars because in case of any kind of a brush with the law enforcement authorities, he may be given special protection by virtue of having it, which he would welcome. But as far as the possibility is concerned—possibility does exist, it seems to me, if he wants to pay the registration fee and get it, it would be a difficult thing for us to discover until after the fact. Of course if there was never any accident, the question would not arise.

Mr. MAZZOLI. So you have no particular thoughts on that matter.

Mr. DAVIS. That is one I think we would just have to have experience on.

Mr. MAZZOLI. I yield to my colleague.

Mr. HARRIS. Of course I have the notion that if, in order to gain such registration in most places, he is going to have to demonstrate insurance or pay the cost of not having insurance. I think most States and jurisdictions have such laws now. So I think that part is closed. The fact remains, though, that that diplomat without insurance could be driving somebody else's car but that person is liable, your colleague tells me.

Ms. FOLGER. In most of our States if someone is driving my car, then I am liable.

Mr. HARRIS. That is the other point. The thing my colleague and I from Kentucky were considering here is whether there could be some requirement with regard to driver's licenses, that a showing of insurance, some kind of insurance, would be required. This is the only question. I don't know whether that would be a practical idea or not.

Do you have comment on that?

Mr. DAVIS. I don't think it would be feasible in the absence of a local mandatory insurance requirement. That is the problem. I mean I don't see how you flush out the case of a diplomat unless you require identification of occupation. Perhaps that does it. It gets into the local procedures with which I am not familiar.

Mr. MAZZOLI. I have one last question. It is just a surmise perhaps on your part, but in your contacts with people from abroad stationed here in the diplomatic corps and in your discussions with them with respect to Mr. Fascell's bill and our bill here, the chairman's bill, do you perceive any kind of a great problem, any diplomatic intrigue or concern that might arise over the passage by the United States of these bills?

Mr. DAVIS. No, sir, I do not.

Mr. MAZZOLI. Thank you very much.

Mr. DANIELSON. Thank you.

Mr. Kindness of Ohio.

Mr KINDNESS. I have no questions.

Mr. DANIELSON. Thank you, Mr. Kindness.

Mr. Harris.

Mr. HARRIS. Thank you, Mr. Chairman.

You say in your statement on page 2, in all European countries, for example, evidence of insurance coverage is required in the form of possession of a green card before a car can cross the border to enter the country. These countries have long possessed the necessary capability for enforcing their individual insurance requirements.

In addition, the head of a U.S. post abroad is assigned responsibility for assuring that all persons under his or her jurisdiction take the necessary measures to insure adequate coverage.

Is there any reason we couldn't to exactly the same thing in this country?

Mr. DAVIS. None of which I am aware.

Mr. HARRIS. Thank you.

Mr. DANIELSON. Thank you very much.

We are moving on schedule at this time. I thank you for your statement. It is in the record. If we agree to get in touch with you, we will feel free to do so.

We now are fortunate to have with us some witnesses from the insurance companies. I have the names of two of you gentlemen here;

Leslie Cheek, of the American Insurance Association; and John J. Nangle of the National Association of Independent Insurers and of the Alliance of American Insurers.

You gentlemen have a common interest. I would like to have you proceed as you will, but please identify yourselves for the record.

## TESTIMONY OF LESLIE CHEEK, VICE PRESIDENT, FEDERAL AFFAIRS, AMERICAN INSURANCE ASSOCIATION; AND JOHN J. NANGLE, WASHINGTON COUNSEL, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS AND THE ALLIANCE OF AMERICAN INSURERS

Mr. DANIELSON. Mr. Nangle.

Mr. NANGLE. My name is John Nangle, Washington counsel for the National Association of Independent Insurers, trade association of property casualty insurers numbering 411 companies that write about 50 percent of the insurance business in the United States.

I also represent, not at all times but for this morning's hearing, the Alliance of Mutual Insurers who number about 111 companies.

Mr. Leslie Cheek, on my right, is vice president of the American Insurance Association whose companies number about 145. The three trade associations testifying today for the record, Mr. Chairman, write about 85 percent of the business in the United States.

Mr. Chairman, I was out of town Thursday when we got the call that this hearing was to be had this morning. This is a very vital subject to us. I put some notes together that I would like to go through very quickly because I know you have a vote.

I would ask that we have time to keep the record open and to follow up on not only the brief remarks that I make this morning, but also to critique one of the previous witness' remarks before this committee.

Mr. DANIELSON. May I interject a comment?

First of all, we will be pleased to receive your information. When the bill was coming up on the schedule, I had the staff make a positive effort to locate somebody to speak on behalf of the insurance industry. I am glad that we found you. So we want your information. That is not going to be excluded. We can't make a judgment here without both sides of the story.

The second point is that your prepared statements which are before us——

Mr. NANGLE. I do not have one. Mr. Cheek submitted a statement.

Mr. DANIELSON. Mr. Check's is received, without objection, into the record.

[The prepared statement of Leslie Cheek follows:]

STATEMENT OF LESLIE CHEEK, VICE PRESIDENT-FEDERAL AFFAIRS, AMERICAN INSURANCE ASSOCIATION

Mr. Chairman and members of the subcommittee: My name is Leslie Cheek, and I am Vice President-Federal Affairs of the American Insurance Association, whose 145 members write approximately one-third of the Nation's automobile insurance. We appreciate this opportunity to appear before you in opposition to H.R. 7679, which would add a new section to Chapter 85 of title 28 of the United States Code authorizing direct actions against the insurers of individuals with diplomatic immunity from liability for their automobile torts.

I want to make it clear at the outset that our members share the widespread concern that individuals injured in automobile accidents involving diplomatically immune drivers be assured of compensation for their losses. We do not believe that diplomatic immunity should relieve all foreign nationals of their liability in tort to citizens of their host Nation. Thus, we support the recent action of the House in passing H.R. 7819, which would strip approximately two-thirds of the foreign diplomatic community of its absolute immunity from U.S. law and require all embassy personnel to purchase liability insurance.

We also share the view expressed by Congressman Fascell during floor consideration of H.R. 7819 that its enactment "will solve about 95 percent of the problems caused by existing law" (Congressional Record, July 27, 1977, at page H7877). With all embassy personnel—diplomatically immune or not—required to carry liability insurance, and those who are immune required to affirmatively assert that immunity, there should be few instances in which redress cannot be obtained by U.S. citizens.

H.R. 7697 appears to be designed to meet the other five percent of the problems—the cases in which the foreign defendant both has and affirmatively asserts his diplomatic immunity from a claim by a U.S. citizen. The entire bill is premised on the assumption that such an individual will be insured. But the bill's terms make this essential assumption unwarranted.

The bill provides for a direct action against "any person who by *contract* has insured such *individual* against *liability*" with respect to auto accident claims (emphasis supplied). The quoted language clearly anticipates that the offending diplomat will have the standard family automobile policy, copy attached, in which the insurer coutracts "to pay *on behalf of the insured* all sums which the *insured* shall become *legally obligated to pay* as damages because of" bodily injury or property damage arising out of an automobile accident (emphasis supplied).

The auto insurance contract is one of indemnification; that is, it obligates the insurer to pay, on behalf of the insured, only those damages that the insured himself becomes legally obligated to pay, plus defense and other costs. Thus, if the insured does not—or, in the case of an immune diplomat, cannot—become legally obligated to pay damages, the insurer has no obligation to pay them on the insured's behalf.

Under these circumstances, a direct action against an immune diplomat's insurer would be of no avail to a claimant, since the insurer's contractual obligation would be entirely contingent on a legal obligation from which the insured is immune.

The bill seeks to address this problem by rewriting the insurance contract in such a fashion as to make an insurer, not party to the accident, defend itself against a claim made against someone who was a party to the accident, with no requirement that the actual defendant either participate, or even cooperate with the insurer, in the defense of the claim.

To be perfectly frank, I doubt that any insurer would be willing to commit its assets to a contract in which it would agree to be held liable for the tortious acts of another who is entirely immune from such liability and who cannot be compelled to help defend the insurer against its vicarious obligation.

H.R. 7679 is a laudable, but fatally flawed, attempt to get around the fact that international law to which the United States is a party gives certain diplomats the opportunity to walk away from the consequences of their tortious acts. Even if it is enacted, which we would urge it not be, it will do nothing to alter the plain facts that if a diplomat is immune from liability, he does not need liability insurance; and that if he buys it, no one can collect under it unless the diplomat is willing to waive his immunity.

We would have no quarrel with a bill which prohibited an insurer of a diplomat against whom a claim has been filed from pleading the diplomat's immunity if the diplomat himself consented to its waiver and to compliance with all the terms of the insurance contract—including notification, cooperation with the insurer and participation in the defense of any claim against him.

But we would vigorously oppose the allowance of direct actions in such situations, on the grounds that in any tort action, the only material issues are negligence and damages. The existence of insurance, no matter how disclosed to a jury, is totally irrelevant to these issues. This fact underlies the rule in 49 states and Rule 411 of the Federal Rules of Civil Procedure precluding introduction of evidence as to the existence of insurance.

The allowance of direct actions against insurers in the narrow class of cases addressed in H.R. 7679 not only would destroy the efficacy of the general evidential rule precluding admission of evidence as to the existence of insurance, but could be subject to Constitutional attack as invidiously discriminatory in its effect.

On a more practical level, the willingness of insurers to provide an auto insurance market for the diplomatic community would be adversely affected by a provision that almost guarantees prejudicial treatment of insurers and insureds alike by juries.

In conclusion, we urge the Subcommittee to abandon its consideration of H.R. 7697. Well-intended as it is, the bill at best cannot solve the legal problem it seeks to address, and, at worst, could set an ill-advised precedent for direct actions and thereby create severe problems for the diplomatic community in obtaining automobile liability insurance.

I would be happy to answer the Subcommittee's questions.

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FAMILY AUTOMOBILE POLICY

Government Employees Insurance Company

A CAPITAL STOCK INSURANCE COMPANY
HEREIN CALLED THE COMPANY
Not Affiliated with the United States Government

INCORPORATED UNDER THE LAWS
OF THE DISTRICT OF COLUMBIA

AGREES with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium, if paid when due, and in reliance upon the statements in the declarations and subject to all the terms of this policy:

## PART I — LIABILITY

**Coverage A — Bodily Injury Liability**

**Coverage B — Property Damage Liability**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

**Supplementary Payments:** To pay, in addition to the applicable limits of liability:

(a) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed $100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

(d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

**Persons Insured:** The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

(2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer,

provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

(3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

**Definitions:** Under Part I:

**"named insured"** means the individual named in the declarations and also includes his spouse, if a resident of the same household;

**"insured"** means a person or organization described under "Persons Insured";

**"relative"** means a relative of the named insured who is a resident of the same household;

**"owned automobile"** means

(a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,

(b) a trailer owned by the named insured,

(c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

(1) it replaces an owned automobile as defined in (a) above, or

(2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or

(d) a temporary substitute automobile;

**"Temporary Substitute Automobile"** means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

**"Non-owned Automobile"** means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile;

**"Private Passenger Automobile"** means a four wheel private passenger, station wagon or jeep type automobile;

**"Farm Automobile"** means an automobile of the truck type with a load capacity of fifteen hundred pounds or less not used for business or commercial purposes other than farming;

**"Utility Automobile"** means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

**"Trailer"** means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile;

**"Automobile Business"** means the business or occupation of selling, repairing, servicing, storing or parking automobiles;

**"Use"** of an automobile includes the loading and unloading thereof;

**"War"** means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Mr. DANIELSON. The inclusion of your complete statement doesn't cut you off from your comments. So just proceed, please.

Mr. NANGLE. Thank you.

Mr. Chairman, it hasn't been mentioned here today and I don't presume to tell the committee what is in this bill, but it is interesting that the previous witnesses have neglected to mention that there are two parts to this bill. The first part is direct access to the insurance company. That is true, that is what we have heard all the testimony about today.

The second part is the most objectionable part of the bill. Without reading to the committee, may I just suggest that part (b), when the insurance company issues the policy on a diplomat, "In any action brought under subsection (a), it shall not be a valid defense that the insured is immune from suit, that the insured is an indispensable party, or, in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose."

Mr. DANIELSON. I have read that four or five times. I would like to ask you, what is objectionable about it?

Mr. NANGLE. That, Mr. Chairman, is objectionable because in the normal, every day insurance transaction in your districts, your constituents, yourself, ourselves, are classified according to the use to which you put the automobile and the territory in which you live. If you live in an urban area where there is a higher frequency of accidents, you are charged more. Policyholders demand it; the public demands this——

Mr. DANIELSON. We have, anyway.

Mr. NANGLE. Yes.

Mr. DANIELSON. OK.

Mr. NANGLE. Now a very important, a very small part of the insurance contract but a very important part of the contract, is the policy conditions.

May I, with the permission of the Chair, read the policy conditions in the standard policy form.

Mr. DANIELSON. Are these conditions set out in that fine print on the back side that nobody can read?

Mr. NANGLE. No, sir.

Mr. DANIELSON. I used to be a lawyer, and we used to say, in the big print they give it to you, in the small print they take it away.

Mr. NANGLE. Yes, sir. We are not the favorite industry in the country, publicitywise, I will grant that. But it is very short and I will try to skip over the language, and I think it is fairly clear.

4. Insured's Duties in the Event of Occurrence, Claim or Suit:

(a) In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable.

(b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

(c) The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing

any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

Mr. Chairman, boiled down to the least common denominator, in the event of a claim or a suit the insured must cooperate with the insurance company.

Mr. DANIELSON. Absolutely.

Mr. NANGLE. If he does not cooperate with the insurance company, the insurance company has no recourse at all but to pay an outrageous demand by a claimant or a claimant's attorney. Those of you, all of you on this committee are attorneys and know what that means. You must have the cooperation of the insured. He must be available for reinvestigation; he must be available for interrogatories; he must be available for depositions; we are still operating under the U.S. legal system, whether this happens in the Federal Republic of West Germany, I don't know, but they are going to be sued in the district courts in this country. The insurance company must have the assured, in this case the diplomat available for all of those things. You all know how fatal it would be for the defense if these things were not available.

Section (b) of the bill takes away, destroys all of its policy defenses that we might have.

Mr. DANIELSON. I beg to differ with you.

Will you show me any language in subsection (b), starting on line 7, page 1, down to line 12, which does what you have just said it does?

Mr. NANGLE. The second part, Mr. Chairman, "in the absence of fraud or collusion, that the insured has violated a term of the contract unless the contract was canceled before the claim arose."

Mr. DANIELSON. I don't see any fraud or collusion there.

Mr. CHEEK. As to the fraud or collusion, the question is whether or not the insured, the diplomat, has cooperated with you in making a defense. If you are stripped of all your defenses, on what basis is there to deny the liability?

What this section asks us to do is to say that merely because somebody has made a claim against our insured, we are to pay, regardless of any finding of liability.

If you can't get hold of the defendant who is the tortfeasor himself, and if he can tell you "I don't want to cooperate. I won't appear in court, I won't provide any evidence relating to my involvement in this accident, you go ahead and pay," that is an absurdity.

Mr. DANIELSON. I see what you are driving at. Obviously he has to cooperate with you. As far as I am concerned, I have no objection to being sure that the language will require his cooperation.

Mr. CHEEK. But you are talking to representatives of liability insurers. What you are asking us to do is to waive any finding of liability on the part of our insured, and merely pay the claimant because of the fact that he has made a claim.

Mr. HARRIS. Mr. Chairman, I have heard him make that statement twice. The language just simply doesn't say that. The language says immunity cannot be used as a defense. But the language does not say you have to accept liability if liability doesn't exist.

Mr. MAZZOLI. Mr. Chairman, I would only add to that, too, Mr. Cheek was saying you are automatically presuming no diplomat will cooperate. I say that is not a fair assumption.

Mr. CHEEK. We don't think it is going to happen in every case. But what if it does?

Mr. MAZZOLI. If they want to stay here, and want a DPL license, and want to stay in the good graces of the Ambassador.

Mr. CHEEK. If that is going to happen, we don't need the language in section B.

Mr. MAZZOLI. I am saying to you, sir, I don't think that is going to be a serious problem. I would also ask if you have any evidence to the contrary, or in any fashion, regarding how the insurance companies of foreign nations deal with this, as we have heard this morning.

Mr. CHEEK. They also operate under an entirely different civil code than ours. Ours is common law. It contemplates an adversary process, in which the plaintiff and the defendant meet in a tribunal and a jury decides whether there was negligence or contributory negligence.

Mr. MAZZOLI. There may come a time when we don't have an adversary system.

Mr. CHEEK. But we do now.

Mr. MAZZOLI. In my judgment, it is inevitable you will have a no-fault before too many years.

Mr. CHEEK. I was going to suggest that that might be a very good way of answering this problem. But the point is until we have that, we do have to deal with the common law as we find it. Section B of this bill denies the insurer, to be perfectly frank about it, due process of law.

Mr. MAZZOLI. I don't agree. But, I appreciate your statement.

Mr. NANGLE. Mr. Chairman, because section B allows the insured—in this case the diplomat—not to abide by the policy conditions, in effect you are denying equal protection under the law to the other policyholders who are insured for the same price because they are in the same territory and the same classification, to and from work, or business usage of the vehicle.

Under the Federal and State antitrust laws, insurance companies, and I say the Federal law because we have a Department of Justice attorney here whose overall responsibility in this area is not as direct because the Federal Congress has allowed the States to regulate the business of insurance, insofar as those State laws in rating and other matters would conform to the Federal antitrust prohibitions.

Under the Federal antitrust laws we cannot discriminate unfairly between risks. If we allowed the diplomats to, in those rare instances, because many of them do have insurance in the voluntary market today, and this business by and large would end up in the assigned risk business plan—to make a difference between those two risks would be a violation, in our opinion, of the State antitrust laws, and thereby the Federal antitrust laws because the Federal Government didn't give a thing away when they said the States should regulate insurance.

They said we will allow you to regulate insurance as long as you are enforcing like or similar antitrust laws. So, the Federal Government still has jurisdiction, as you well know, on this committee over the State regulations of insurance. They have oversight, and they have the final say.

Now, I would propose two solutions. I am not suggesting these are the best solutions. If we want to take care of a problem here, why can't the government, the foreign government, post a bond with the State Department?

I am not trying to put added work or administrative burden on the State Department. I realize they may not particularly agree with us because we certainly don't agree with the intent of this bill either.

If there is a problem, if there is a Halle Brown—we have heard about how great the foreign diplomats are, and what they require of us—I don't think that Panama has done very well.

Mr. DANIELSON. I don't think we are making any progress. You could take Idi Amin from Uganda, and that wouldn't prove a point to us, either—although I am positive he doesn't give us much consideration.

Mr. NANGLE. Mr. Chairman, I haven't researched this as much as Dr. Ristau has. But it is my impression that there are only two States that by statute have a direct access provision. One of them is Wisconsin and the other is Louisiana. I can read the Louisiana language to apply only to those cases where the insured is insolvent, or in bankruptcy.

Neither of those statutory provisions for direct access says that an insurance company doesn't have any defenses. There are two other jurisdictions—Florida, by judicial interpretations, and New York—and I must check this because Dr. Ristau, who I have a lot of respect for, suggests that New York does not have a direct access statute.

It is my impression that New York by judicial interpretation, does.

Now, CHAMPUS and Medicaid, and I believe that was the sections the previous witness was referring to, he likened this bill to that. He says the Federal Government has done this before. That is not necessarily true.

In CHAMPUS and Medicaid the Government has retained for itself the right of subrogation only. I submit to you, sir, that is far away from what this bill is all about.

Now, to rate these risks individually—this subject came up—would be prohibitive. The insurance premium would be prohibitive. No company in its right mind would want this business, even in the normal market.

Then to rate it with the policy—distribute these policy defenses—we are talking about 2,200 insurers. Remember we are not talking about them as a class. We are talking about whatever risks are in the District—they have to be rated separately, and I guess that would be the lion's share of these risks.

But Maryland and Virginia have a bunch of these risks, too. In the credibility base for actuarial sound rates it gets smaller and smaller as you go over into Virginia and Maryland.

So, I don't think that separately rating these risks is going to be the answer.

Your premium for that small a group is not credible, and the money you would have to charge would be astronomical. The insurance rates are high enough as it is. Passing this bill, putting them in the assigned risk plan, everybody in the District would have to pick up the tab.

Mr. MAZZOLI. Could I ask a question on this? You talk about astronomically high rates of insurance. I am aware of all of the traffic—all

the nonmoving offenses of parking by fire hydrants. But the serious problems relating to moving violations could be relevant to the determination of these rates would they not?

Mr. NANGLE. Yes, sir, that is correct. You are talking about the violations or the cost of the accidents?

Mr. MAZZOLI. I assume you must say from these astronomical rates that the incidence of accidents and so forth must be tremendous.

Mr. NANGLE. The incidence of accidents do not have to be. The mere fact we are stripped of our policy defenses would cause—the frequency could be unchanged, but the severity would go way up. Actual statistics that go into ratemaking processes depend on the two, frequency and severity.

Mr. MAZZOLI. Again, I was talking with your colleague, Mr. Cheek. I disagree that you have been stripped of your defenses. But it is on that basis that the rates would be high, not on the number of accidents in which diplomats are involved.

Mr. NANGLE. Mr. Mazzoli, may I suggest that something we worked out, whereby when an insurance company—as I mentioned before, the insurance company wouldn't take this business. I don't think they would take the standard business that is in the market now, stripped of its defenses.

If we could work something out whereby when an insurance company or the assigned risk takes these risks in, that they be precluded by enforcement from raising the defense of diplomatic immunity, wouldn't that—and that in the place of section (b) is the big objection.

A, I don't like it, we don't like it, but we could live with it.

Mr. MAZZOLI. I am not sure about that. I would think off the top of my head that it would be impossible to require as a condition that they waive something which their government has, and only the government itself could probably waive, and under only most unusual circumstances.

Mr. NANGLE. May I suggest, Mr. Mazzoli, in the case of hospitals—years ago eleemosynary institutions by and large were immune from liability. Some responsible hospitals bought insurance policies.

I can't believe this happened, but a lot of things happened before I was born, I suppose—but insurance companies would take—maybe they wrote it at a lot less premium—when the hospital was sued, the insurance company would raise the defense of, you know, that their insured was an eleemosynary institution. They didn't get by with that very long.

The court says, you take a premium for this, you agreed under contract, now you respond. Now I don't believe you can write a hospital or other eleemosynary institution and assert that defense.

So, it is not without precedent, Mr. Mazzoli, that the insurance companies could be required to write a policy—once they have written a policy on a diplomat, to not assert the diplomatic immunity defense.

Now, I have heard here today that you don't want to strip us of our defenses, but at the same time you do not want us to assert the defense of diplomatic immunity. I say fine, let's work it out where we cannot do that, but let's still require the diplomatic corps, the 2,200 that we are talking about, to cooperate, answer our interrogatories, attend depositions, attend hearings, attend the court sessions, and all the things that you and I are required to do under an insurance contract.

Mr. MAZZOLI. Thank you.

Mr. DANIELSON. Mr. Moorhead?

Mr. MOORHEAD. I think you overstate your case. But I understand what your problem is. You feel there is no economic motive or pressure to require the foreign diplomat to cooperate with you.

Mr. NANGLE. Certainly not.

Mr. MOORHEAD. You are afraid you will not get him to cooperate in the defense.

Mr. NANGLE. We don't want a reluctant bride.

Mr. MOORHEAD. I don't think you would really get a reluctant bride in most of the instances because most foreign diplomats would not want to have something of that kind apparently against their record. If they felt they had a defense, I think they would want to defend. But I understand your problem.

I don't know whether there is a way of getting around it or not.

Now, I would think you would be able to handle the other parts of the problem that you have by higher rates. I don't know whether it is possible to have some kind of a high risk fund that you maintain in this kind of instance, and if the situation doesn't work out, you make a premium adjustment later on down the line. I don't want to cause you more redtape.

But right now you have a tremendous advantage in the voluntary policies that you are selling, because you don't have to sell them as high as you would another because there is no way whatsoever that an individual that is hurt could afford to go to the Federal Republic of Germany or wherever it might be to bring those suits.

So, you have a big advantage. This may put a little bit of that advantage on the other side, but some way or other we have to protect these people that could be hurt. I suppose it is felt that the insurance company could take a little more risk, rather than the general population.

Mr. NANGLE. Mr. Moorhead, you know, we are talking about three jurisdictions with 2,200. The public thinks insurance companies are magical money machines. But we get our money—we get the money from you, and from the chairman, and from everybody in this room.

When our experience is adverse and contrary to the feeling of the public, the insurance industry, the casualty business, under its normal contracts and voluntary business have had disastrous years in the past several years.

We don't share this feeling, this great feeling that the diplomats, all of them are going to be as generous in their time and their cooperation. I don't want to get into the parking ticket thing. But look at the scofflaw attitude on that.

I am not talking about the Federal Republic of Germany of France or Italy or England or some of the other so-called countries that I as a layman consider first-class operations, and want to do the right thing. There are emerging nations who may want to assert their sovereignty in small ways.

There are obvious examinees in other countries, where they may, and could probably just say, "Well, I don't have to do it, so forget it." It may be a much bigger problem than you realize.

Mr. MOORHEAD. That is true. If there is a problem there, and you can establish that, I am sure some kind of adjustment would be made

in the law that would take care of unforseen costs being imposed on insurers.

But I really don't think—I can see where you can have some of the instances you mention where it won't work too well. You can get people that are rebelling because of one thing or another, that won't go and testify. But I think overall you are going to find the diplomatic community cooperates.

You get bad situations elsewhere, too, not just there.

Mr. NANGLE. Trying to solve these problems one by one——

Mr. MOORHEAD. If you can show us an amendment that would help you with the law on this thing, I would be willing to—I believe in the free enterprise system. I don't want the Government selling the insurance, or getting involved in any aspect of the insurance business.

I don't want that to happen.

Mr. CHEEK. Mr. Moorhead, you said you would be interested in an amendment. I think Mr. Nangle has already suggested the elimination of part B of this bill would go a long way toward——

Mr. MOORHEAD. What that provision says is that the individual, that has been hurt, regardless of what happens elsewhere, has got a valid claim. If he can prove it in court, he can collect.

If you took that out and the diplomat just said, "We won't cooperate," then the injured individual, who had nothing to do with this battle, would be deprived of a right to collect.

Mr. CHEEK. Let's look by analogy to the existing direct action statutes.

Louisiana's statute, which, as Mr. Nangle mentioned, probably applies only when the insurer is insolvent or bankrupt, requires a judgment to be rendered against the insured before the direct action will lie. It also requires the insured to comply with the terms of the contract.

This bill before you has neither of those requirements.

It does not require a judgment to be rendered against the insured, and it specifically says that the insured has the right not to comply with the terms of the contract.

Mr. MOORHEAD. May I ask you one question. Assuming a judgment would be levied against you, and there had been no cooperation by the insured, could you not protect yourself in your contract by providing a cause of action against the insured back in his own country when he went back there?

Wouldn't you have that claim?

Mr. CHEEK. I suppose you could, but to sell a man a policy that is predicated on his complying with the terms of that contract, and then when the time comes for us to deliver on our obligation, he is relieved by a Federal statute from complying with the terms that he has agreed to, and which the premium has been based upon, that is an impossible situation.

Mr. MOORHEAD. You are going to have to charge him double, if the risk is greater.

Mr. CHEEK. The risk is substantially greater. But the point that unifies all of the direct action statutes that have been enacted thus far is the requirement that the insured himself must be liable.

The Wisconsin statute, for example, only requires that the insurer may be joined. There is no separate action against him.

Mr. MOORHEAD. Can't you make him liable?

Mr. CHEEK. What we are trying to tell you is that we can't. There is no way that you can get around the fact that these people, by virtue of international law to which the United States is a party, can resist any attempt to enforce a judgment upon them.

They can resist any attempt to have themselves brought into a court of law and held liable. They are immune from process. What you are trying to do is substitute an insurance company, without any cooperation from the real party at interest to the suit, to get around that fact.

I don't think that is a feasible proposition.

Mr. MOORHEAD. Would you assume that if, say, two-thirds, three-fourths or nine-tenths of the cases you would not get cooperation, or do you think——

Mr. CHEEK. One would certainly hope so. But the bill creates the presumption that all of the things that you say won't happen will, and strips us of any defense based on that behavior.

Mr. NANGLE. Which you and I must abide by.

Mr. DANIELSON. Would the gentleman yield? Let me ask you this. I think this discussion is very useful. But I think we are confusing two things here.

Take a look at subsection (b) carefully. It does more than one thing First, it says that, in any action brought under subsection (a), it shall not be a valid defense that the insured is immune from suit.

Mr. CHEEK. In other words, the insurer could not raise that defense?

Mr. DANIELSON. That is correct. I don't see how that can hurt you at all.

Mr. NANGLE. It can hurt us, but I think we can live with that.

Mr. DANIELSON. I am talking about that one point. I don't think it will hurt you at all, very frankly, because you can crank that into your fees.

There is a second point here—it shall not be a valid defense that the insured is an indispensible party. That would not hurt you.

Mr. CHEEK. It certainly would. If there is some question as to whether or not the plaintiff was contributorily negligent——

Mr. DANIELSON. It has nothing to do with that part of the defense.

Mr. CHEEK. Why doesn't it?

Mr. DANIELSON. This would be when the plaintiff brings his action against the named defendant, the insurance company, you could not come in and move to dismiss on the grounds that an indispensible party has not been joined.

Mr. CHEEK. But if we had no right to bring him into that process?

Mr. DANIELSON. You can't bring him in as a party to the lawsuit, as a plaintiff or defendant.

Mr. CHEEK. But our liability rests on his liability.

Mr. DANIELSON. But that——

Mr. CHEEK. The contract says we will pay on behalf of the insured amounts that he is legally obligated to pay as a result of bodily injury or property damage.

Mr. DANIELSON. This bill would bring about a fundamental change in the law on that. This is not indemnity. This would be liability, because you would never be able to get a judgment against the diplomat here as a condition precedent to the liability arising——

Mr. CHEEK. We could not even avail ourselves of his testimony to avoid having a judgment imposed on ourselves.

Mr. DANIELSON. That is the third part of this section. I happen to be with you on that. I think you have got to carefully separate the three——

Mr. CHEEK. I stand corrected. You are absolutely right.

Mr. DANIELSON [continuing]. Points that are in this section. One is the fact that he is immune as an individual from lawsuit. Two, that he has not been named as an indispensible party. On the third, I do feel you have got to have some reasonable basis for assuring his cooperation.

Now, I don't know how—I am asking you to please give us some suggestions because I think it is not an unsolvable problem.

Mr. NANGLE. Mr. Chairman, I was about to suggest, and you are entirely correct, you just put a period after "party" on line 9, page 2.

Mr. DANIELSON. I think we have to go a little bit farther. I think we have to find some way that the individual has to at least cooperate with you on the matter of providing the evidence that you are going to need in support or in defense of the claims that you assert.

Mr. CHEEK. And that there be some incentive on the insured's part to cooperate with us.

Mr. MAZZOLI. Mr. Chairman, isn't there financial incentive here on your part, because if they don't cooperate——

Mr. CHEEK. They are immune from the judgment.

Mr. MAZZOLI. Up go the rates. You still have control of the rates.

Mr. NANGLE. Mr. Mazzoli, your rates and my rates and everybody's rates.

Mr. MAZZOLI. Couldn't you have a separate class?

Mr. DANIELSON. They could be a separate class.

Mr. MAZZOLI. There is no reason why you have to charge me for their derelictions. It is a fairly small class, and I think easily identifiable.

Mr. NANGLE. It is much too small.

Mr. MAZZOLI. I have to go and vote. But I have a theory. If you gentlemen don't want to handle this particular kind of business, I am going to set up a firm of Harris and Mazzoli, insurance brokers, and I guarantee you we will both be able to retire from here in pretty good shape.

Mr. NANGLE. That would be fine. But Lloyds of London—I would like to ask the committee, if committee counsel doesn't mind, asking Lloyds of London what they would like to do in this regard. I know there is a previous witness that said they would like that business.

Mr. DANIELSON. Gentlemen, there is a vote on.

Mr. Kindness, do you have a question?

I want to announce that we are coming to the end of our tether for today. I can't help it. I am sorry, but it is a fact of life.

Mr. HARRIS. Mr. Chairman, just one quick last question.

Is there something in this legislation, or something in the Fascell legislation, that requires your members to write this coverage?

Mr. NANGLE. Yes, sir. Not in the legislation itself, Mr. Harris, but in the voluntary or statutory assigned risk laws. No, those risks that cannot find themselves in the normal standard market because of a greater exposure to loss, accident record, things of that nature, end up in the so-called assigned risk plan.

A company has a stake—every company writing in the State has a stake—in the assigned risk plan in ratio, relationship to the amount of business it does in that State.

Mr. HARRIS. You assume under this legislation this category would be assigned, would be put in the assigned risk plan which your companies would be covering.

Mr. NANGLE. By and large, I think it would; yes, sir.

Mr. HARRIS. I would like for you to look at page 5 of the Fascell bill, and maybe advise the subcommittee if you still think so.

Mr. DANIELSON. I thank all of you for being here. I regret that we cannot just continue, but we cannot.

Mr. NANGLE. Thank you, Mr. Chairman.

Mr. DANIELSON. Just a minute, please.

Congressman Stephen Solarz of New York wished to appear, and has lodged a statement with the subcommittee. Without objection, I would like to have it included in the record.

[The prepared statement of Hon. Stephen J. Solarz follows:]

STATEMENT OF HON. STEPHEN J. SOLARZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, it is indeed a great pleasure to testify before my distinguished colleague from the International Relations Committee and the Chairman of this Subcommittee, Representative George E. Danielson. From your work in this Subcommittee last year on the Foreign Sovereign Immunities Act of 1976, it is clear that you are one of the few Members who understands the complicated intricacies of diplomatic immunity.

I am here today for two reasons. First, I would like to wholeheartedly endorse H.R. 7679, a bill that would complement the Diplomatic Relations Act passed by the House by authorizing suits against insurance companies for those American citizens who have been placed in the unfortunate situation of being unable to collect damages after an accident with a diplomat.

Second, while you consider H.R. 7679, I would like to urge you to consider simultaneously a bill that I have introduced to make the U.S. Government in effect a court of last resort. My bill—H.R. 8374—is designed to close the one loophole that would remain after passage of the direct action statute.

Let me make it clear at the outset of my testimony that I fully support the concept of diplomatic immunity for those who, according to existing international law, qualify for it. This concept has served to protect those serving their countries world wide and has long-standing legitimacy in international legal history. Indeed, with farflung U.S. representation in more than 100 countries around the world, there is little doubt that the protections accorded to our diplomatic representatives serve to facilitate their jobs. I would also like to add that I do not mean, by proposing legislation to deal with abuses of immunity by a few diplomats, to sully the image of the rest of the diplomatic corps.

Be that as it may, I do believe that it is high time to bring U.S. law into conformance with present international practice as well as to provide redress for those who, because of diplomatic nicities, are prevented from seeking just compensation for injury or financial harm caused by diplomatic derelicts.

The passage of the Diplomatic Relations Act in the Senate will go a long way toward bringing U.S. law into line with the Vienna Convention on Diplomatic Relations of 1961 which came into force in the United States in 1972. Many of those who formerly had full immunity will be stripped of all or part of their immunity. In addition, the requirement that all those who will still retain some immunity from United States law obtain automobile insurance will protect many Americans who get involved in accidents with diplomats.

Even with the House-passed bill, of course, there is nothing to stop an insurance company from claiming immunity for a diplomat involved in an accident even when the home country of that diplomat did not itself invoke immunity. Thus, Americans might still find themselves in situations where they would not be able to collect for damages incurred in an accident with a diplomat.

Of course, H.R. 7679 would deal with this problem by enabling an individual to sue an insurance company directly instead of the offending diplomat, regardless of whether immunity has been invoked by the diplomat's government. Your bill is therefore an important cog in the effort to close the few remaining loopholes that would exist after passage of the Diplomatic Relations Act.

Unfortunately, even with passage of this important bill, there is one more loophole that would exist. Administration witnesses in testimony before the International Relations Committee, and those members of the Committee most closely involved with passage of the Diplomatic Relations Act, agreed that some 95 percent of the existing problems relating to diplomatic immunity will be taken care of by the legislation presently working its way through the Congressional processes. However, there will still be a few cases that will not be covered because Americans will be involved in accidents with officials with diplomatic immunity who fail to obtain automobile insurance despite the best efforts of the State Department.

The Diplomatic Relations Act will require all members of missions and their families to possess liability insurance if they plan to operate a motor vehicle in this country. The President—undoubtedly through the Department of State—is required to promulgate regulations for the diplomatic community setting forth the insurance requirement. Yet there is no way to ensure that all members of the diplomatic community will actually obtain the required insurance.

If an American citizen gets involved in an accident with one of these officials with immunity who slips through the State Department's regulations, those few Americans would be left with no recourse under the law. In short, there is no way to ensure that every American is protected by the new laws concerning immunity.

For these few loophole cases—where action against a diplomat or his insurance company is impossible—I would urge that you add a section to the bill being marked up by this Subcommittee to provide some measure of protection by making the Government, in effect, a court of last resort. My bill would accomplish this purpose by making the Government liable for claims for damages against an individual entitled to diplomatic immunity—if the victim has no other legal recourse. Under the procedures in the bill, the Court of Claims would be given jurisdiction for determining the merits of a claim and for setting the amount of damages in situations where an American has been victimized by negligent actions of diplomats and has nowhere else to turn.

I believe that there are ample precedents for the government to become a so-called court of last resort. In more and more cases, the courts are holding state agencies liable for actions of criminals. In twenty states, including California and New York, there are state programs to reimburse crime victims. Without passage of the legislation that I propose, the only remaining option for an American citizen who cannot collect damages against a diplomat is to get a private bill passed through the Congress, which is a long and cumbersome process, to say the least.

In short, I strongly supported the Diplomatic Relations Act that has already passed the House to limit immunity for many diplomats and their families. I also strongly support H.R. 7679 to make sure that, for Americans who still are not able to collect damages after accidents involving those who retain their immunity, suits could be filed against insurance companies with whom the diplomats have taken out liability insurance.

But when despite these measures an American runs up against a stone wall—when he or she has no other means of restitution—I believe that the U.S. government should be held liable for claims. After all, that stone wall is in place because the federal government confers immunity on the diplomatic community. The addition of my bill to H.R. 7679, in conjunction with the Diplomatic Relations Act, will ensure that we no longer have a Halla Brown case where an American is involved in an accident with a diplomat and has no recourse under the law.

Mr. DANIELSON. I would like to state that I request of you gentlemen, through the persons whom you represent, or through you to them, I should say, to indicate that we are going to have more testimony. I am not comfortable with the lack of guarantee that you would get cooperation from the insured individual.

Beyond that, I am comfortable. I want to let you know where I stand on this. But you have to have, as a practical matter, cooperation from the insured individual, or you are going to have a tough row to hoe.

I would like to make this bill something we could all live with. I am requesting that you contact your people and tell them to please light a little fire under it—because I am not one to brook an awful lot of delay—and let's see if they cannot provide us, through you gentlemen or otherwise, with some suggested and serious answers to this problem.

I think this is an important piece of legislation. I am not silly enough to think that it is perfect. But, I do think that it is a step in the correct direction, and it is incumbent upon us to try to work out a solution that all of us can live with, with a reasonable degree of comfort, and I hope, for you people, a reasonable amount of profit because you should have it.

So, would you try to see what you can do along that line, please?

But please don't confuse yourself with the first two references to subsection (b). I think they are simply to get around the current rules which require that you join indispensible parties, et cetera.

The important thing is then cooperation with you, and the terms of the contract.

I would like to mention to the other members of the subcommittee—we had the testimony this morning of Mr. Brown of Michigan——

Mr. KINDNESS. Mr. Chairman, is it necessary at this point before this hearing is concluded, then, to reserve the request for another day of hearings?

Mr. DANIELSON. We are going to have more hearings. I am not satisfied yet. I want to at least feel comfortable. So you don't have to. Now, H.R. 8001—I know you are familiar with this, the Federal Life and Casualty situation—Mr. Moorhead has authorized me to vote on his behalf. You are familiar with it, I believe— Mr. Mazzoli, Mr. Harris.

Mr. MAZZOLI. More or less, Mr. Chairman. I have not heard enough. I would have to vote against it just on the basis I have not heard enough.

Mr. DANIELSON. I have Mr. Moorhead's vote.

On H.R. 8001, there is an urgency involved, for the reason I mentioned. Would those in favor please vote, "aye."?

Mr. HARRIS. Mr. Chairman, if we are going to meet again, I would like to have a chance to study this.

Mr. DANIELSON. Would you mind this? We are under general debate—not the 5-minute rule. Would you mind if I found we can do it, and try to get together later on this afternoon? Would that be agreeable?

Mr. KINDNESS. I would just indicate my vote be aye.

Mr. DANIELSON. Would that be all right with you, Mr. Harris?

Mr. HARRIS. Yes, sir.

Mr. DANIELSON. Thank you.

[Whereupon, at 12:30 p.m., the subcommittee adjourned.]

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